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Senate. Committee on Interstate Commerce

Government Investigation of Railway  
Disputes

64-2

pt. 1-2



# GOVERNMENT INVESTIGATION OF RAILWAY DISPUTES

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## HEARINGS

BEFORE THE

## COMMITTEE ON INTERSTATE COMMERCE UNITED STATES SENATE

SIXTY-FOURTH CONGRESS

SECOND SESSION

ON THE TENTATIVE

BILL TO AMEND AN ACT ENTITLED "AN ACT PROVIDING  
FOR MEDIATION, CONCILIATION, AND ARBITRATION IN  
CONTROVERSIES BETWEEN CERTAIN EMPLOYERS AND  
THEIR EMPLOYEES," APPROVED JULY 15, 1913,

AND THE TENTATIVE BILL

TO AUTHORIZE THE PRESIDENT OF THE UNITED STATES  
IN CERTAIN EMERGENCIES TO TAKE POSSESSION OF RAIL-  
ROAD, TELEPHONE, AND TELEGRAPH LINES,  
AND FOR OTHER PURPOSES

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JANUARY 2, 1917

*Part 1*



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1917





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# GOVERNMENT INVESTIGATION OF RAILWAY DISPUTES.

TUESDAY, JANUARY 2, 1917.

UNITED STATES SENATE,  
COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The committee met at 10 o'clock a. m., at Room 326, Senate Office Building, Senator Francis G. Newlands presiding.

Present: Senators Newlands (chairman), Pomerene, Thompson, Gore, Underwood, Cummins, Brandegee, and Townsend.

The committee had under consideration the message of the President of the United States, as follows:

ADDRESS OF THE PRESIDENT OF THE UNITED STATES DELIVERED AT A JOINT SESSION  
OF THE TWO HOUSES OF CONGRESS, DECEMBER 5, 1916.

GENTLEMEN OF THE CONGRESS: In fulfilling at this time the duty laid upon me by the Constitution of communicating to you from time to time information of the state of the Union and recommending to your consideration such legislative measures as may be judged necessary and expedient I shall continue the practice, which I hope has been acceptable to you, of leaving to the reports of the several heads of the executive departments the elaboration of the detailed needs of the public service and confine myself to those matters of more general public policy with which it seems necessary and feasible to deal at the present session of the Congress.

I realize the limitations of time under which you will necessarily act at this session and shall make my suggestions as few as possible; but there were some things left undone at the last session which there will now be time to complete and which it seems necessary in the interest of the public to do at once.

In the first place, it seems to me imperatively necessary that the earliest possible consideration and action should be accorded the remaining measures of the program of settlement and regulation which I had occasion to recommend to you at the close of your last session in view of the public dangers disclosed by the unaccommodated difficulties which then existed, and which still unhappily continue to exist, between the railroads of the country and their locomotive engineers, conductors, and trainmen.

I then recommended:

First, immediate provision for the enlargement and administrative reorganization of the Interstate Commerce Commission along the lines embodied in the bill recently passed by the House of Representatives and now awaiting action by the Senate; in order that the commission may be enabled to deal with the many great and various duties now devolving upon it with a promptness and thoroughness which are, with its present constitution and means of action, practically impossible.

Second, the establishment of an eight-hour day as the legal basis alike of work and of wages in the employment of all railway employees who are actually engaged in the work of operating trains in interstate transportation.

Third, the authorization of the appointment by the President of a small body of men to observe the actual results in experience of the adoption of the eight-hour day in railway transportation alike for the men and for the railroads.

Fourth, explicit approval by the Congress of the consideration by the Interstate Commerce Commission of an increase of freight rates to meet such additional expenditures by the railroads as may have been rendered necessary by the adoption of the eight-hour day and which have not been offset by administrative readjustments and economies, should the facts disclosed justify the increase.

Fifth, an amendment of the existing Federal statute which provides for the mediation, conciliation, and arbitration of such controversies as the present by adding to it a provision that, in case the methods of accommodation now provided for should fail, a full public investigation of the merits of every such dispute shall be instituted and completed before a strike or lockout may lawfully be attempted.

And, sixth, the lodgment in the hands of the Executive of the power, in case of military necessity, to take control of such portions and such rolling stock of the railways of the country as may be required for military use and to operate them for military purposes, with authority to draft into the military service of the United States such train crews and administrative officials as the circumstances require for their safe and efficient use.

The second and third of these recommendations the Congress immediately acted on; it established the eight-hour day as the legal basis of work and wages in train service and it authorized the appointment of a commission to observe and report upon the practical results, deeming these the measures most immediately needed; but it postponed action upon the other suggestions until an opportunity should be offered for a more deliberate consideration of them. The fourth recommendation I do not deem it necessary to renew. The power of the Interstate Commerce Commission to grant an increase of rates on the ground referred to is indisputably clear and a recommendation by the Congress with regard to such a matter might seem to draw in question the scope of the commission's authority or its inclination to do justice when there is no reason to doubt either.

The other suggestions—the increase in the Interstate Commerce Commission's membership and in its facilities for performing its manifold duties, the provision for full public investigation and assessment of industrial disputes, and the grant to the Executive of the power to control and operate the railways when necessary in time of war or other like public necessity—I now very earnestly renew.

The necessity for such legislation is manifest and pressing. Those who have intrusted us with the responsibility and duty of serving and safeguarding them in such matters would find it hard, I believe, to excuse a failure to act upon these grave matters or any unnecessary postponement of action upon them.

Not only does the Interstate Commerce Commission now find it practically impossible, with its present membership and organization, to perform its great functions promptly and thoroughly but it is not unlikely that it may presently be found advisable to add to its duties still others equally heavy and exacting. It must first be perfected as an administrative instrument.

The country can not and should not consent to remain any longer exposed to profound industrial disturbances for lack of additional means of arbitration and conciliation which the Congress can easily and promptly supply. And all will agree that there must be no doubt as to the power of the Executive to make immediate and uninterrupted use of the railroads for the concentration of the military forces of the Nation wherever they are needed and whenever they are needed.

This is a program of regulation, prevention, and administrative efficiency which argues its own case in the mere statement of it. With regard to one of its items, the increase in the efficiency of the Interstate Commerce Commission, the House of Representatives has already acted; its action needs only the concurrence of the Senate.

I would hesitate to recommend, and I dare say the Congress would hesitate to act upon the suggestion should I make it, that any man in any occupation should be obliged by law to continue in an employment which he desired to leave. To pass a law which forbade or prevented the individual workman to leave his work before receiving the approval of society in doing so would be to adopt a new principle into our jurisprudence which I take it for granted we are not prepared to introduce. But the proposal that the operation of the railways of the country shall not be stopped or interrupted by the concerted action of organized bodies of men until a public investigation shall have been instituted which shall make the whole question at issue plain for the judgment of the opinion of the nation is not to propose any such principle. It is based upon the very different principle that the concerted action of powerful bodies of men shall not be permitted to stop the industrial processes of the nation, at any rate before the nation shall have had an opportunity to acquaint itself with the merits of the case as between employee and employer, time to form its opinion upon an impartial statement of the merits, and opportunity to consider all practicable means of conciliation or arbitration. I can see nothing in that proposition but the justifiable safeguarding by society of the necessary processes of its very life. There is nothing arbitrary or unjust in it unless it be arbitrarily and unjustly done. It can and should be done with a full and scrupulous regard for the interests and liberties of all concerned as well as for the permanent interests of society itself.

Three matters of capital importance await the action of the Senate which have already been acted upon by the House of Representatives: The bill which seeks to

extend greater freedom of combination to those engaged in promoting the foreign commerce of the country than is now thought by some to be legal under the terms of the laws against monopoly; the bill amending the present organic law of Porto Rico; and the bill proposing a more thorough and systematic regulation of the expenditure of money in elections, commonly called the corrupt practices act. I need not labor my advice that these measures be enacted into law. Their urgency lies in the manifest circumstances which render their adoption at this time not only opportune but necessary. Even delay would seriously jeopard the interests of the country and of the Government.

Immediate passage of the bill to regulate the expenditure of money in elections may seem to be less necessary than the immediate enactment of the other measures to which I refer, because at least two years will elapse before another election in which Federal offices are to be filled; but it would greatly relieve the public mind if this important matter were dealt with while the circumstances and the dangers to the public morals of the present method of obtaining and spending campaign funds stand clear under the recent observation and the methods of expenditure can be frankly studied in the light of present experience, and a delay would have the further very serious disadvantage of postponing action until another election was at hand and some special object connected with it might be thought to be in the mind of those who urged it. Action can be taken now with facts for guidance and without suspicion of partisan purpose.

I shall not argue at length the desirability of giving a freer hand in the matter of combined and concerted effort to those who shall undertake the essential enterprise of building up our export trade. That enterprise will presently, will immediately, assume, has indeed already assumed, a magnitude unprecedented in our experience. We have not the necessary instrumentalities for its prosecution; it is deemed to be doubtful whether they could be created upon an adequate scale under our present laws. We should clear away all legal obstacles and create a basis of undoubted law for it which will give freedom without permitting unregulated license. The thing must be done now, because the opportunity is here and may escape us if we hesitate or delay.

The argument for the proposed amendments of the organic law of Porto Rico is brief and conclusive. The present laws governing the island and regulating the rights and privileges of its people are not just. We have created expectations of extended privilege which we have not satisfied. There is uneasiness among the people of the island and even a suspicious doubt with regard to our intentions concerning them which the adoption of the pending measure would happily remove. We do not doubt what we wish to do in any essential particular. We ought to do it at once.

At the last session of the Congress a bill was passed by the Senate which provides for the promotion of vocational and industrial education which is of vital importance to the whole country because it concerns a matter, too long neglected, upon which the thorough industrial preparation of the country for the critical years of economic development immediately ahead of us in very large measure depends. May I not urge its early and favorable consideration by the House of Representatives and its early enactment into law? It contains plans which affect all interests and all parts of the country, and I am sure that there is no legislation now pending before the Congress whose passage the country awaits with more thoughtful approval or greater impatience to see a great and admirable thing set in the way of being done.

There are other matters already advanced to the stage of conference between the two Houses of which it is not necessary that I should speak. Some practicable basis of agreement concerning them will no doubt be found and action taken upon them.

Inasmuch as this is, gentlemen, probably the last occasion I shall have to address the Sixty-fourth Congress, I hope that you will permit me to say with what genuine pleasure and satisfaction I have cooperated with you in the many measures of constructive policy with which you have enriched the legislative annals of the country. It has been a privilege to labor in such company. I take the liberty of congratulating you upon the completion of a record of rare serviceableness and distinction.

The CHAIRMAN. The committee will come to order. The purpose of this hearing is to consider the recommendations of the President in his recent message with respect to measures which may be regarded as supplementary to the bill passed at the last session fixing eight hours as the standard for the work day among the employees engaged in interstate transportation. The hearing before this committee on the law (Public, No. 252, 64th Cong.), entitled "An act

to establish an eight-hour day for employees of carriers engaged in interstate and foreign commerce, and for other purposes," which was approved by the President on September 3 last, is printed as Senate Document 549, Sixty-fourth Congress, first session, and can be obtained at the Senate Document Room upon application.

A tentative print has been made by the committee of the proposed measure amending the act "providing for mediation, conciliation, and arbitration in controversies between certain employers and their employees, approved June 15, 1913," and providing for Government investigation where the parties to the controversy fail to come to an understanding either through mediation or voluntary arbitration, and providing also for a stay of the right of strike or lockout during the period of investigation and for a certain period thereafter; also another measure authorizing the President of the United States in certain emergencies to take possession of railroad, telephone, and telegraph lines, and for other purposes.

In this connection will probably also be considered an amendment which was offered at the last session to the wage and eight-hour bill by Mr. Underwood, and providing for the fixing of wages of employees engaged in interstate transportation by the Interstate Commerce Commission, and which has been recently presented as a bill, and also an amendment offered by myself to that bill providing for punishing any obstruction or interference with trains operating in interstate commerce, and characterizing it as a misdemeanor punishable by fine or imprisonment.

Senator Townsend also has a bill pending upon this subject, and all of these will be inserted by the reporter in the record.

(The bills referred to are here printed in full, as follows:)

[COMMITTEE PRINT.]

[S. —, Sixty-fourth Congress, second session.]

A BILL To amend an Act entitled "An Act providing for mediation, conciliation, and arbitration in controversies between certain employers and their employees," approved July fifteenth, nineteen hundred and thirteen.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That sections one and two of an act entitled "An Act providing for mediation, conciliation, and arbitration in controversies between certain employers and their employees," approved July fifteenth, nineteen hundred and thirteen, be amended so as to read as follows:

"SECTION 1. That the provisions of this Act shall apply to any common carrier or carriers and their officers, agents, and employees, except masters of vessels and seamen, as defined in section forty-six hundred and twelve, Revised Statutes of the United States, engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, for a continuous carriage or shipment from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States.

"The term 'railroad' as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term 'transportation' shall include all instrumentalities of shipment or carriage.

"The term 'employees' as used in this Act shall include all persons ~~actually engaged in any capacity in train operation or train service of any description,~~ who are now or may hereafter be actually engaged in the make-up, dispatch, or operation of trains used for the transportation of persons or property on railroads from any State or Territory of the United States or the District of Columbia to any other State or Territory of the United

States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and notwithstanding that the cars upon or in which they are employed may be held and operated by the carrier under lease or other contract: *Provided, however,* That this Act shall not be held to apply to employees of street railroads and shall apply only to employees engaged in railroad train service. In every such case the carrier shall be responsible for the acts and defaults of such employees in the same manner and to the same extent as if said cars were owned by it and said employees directly employed by it, and any provisions to the contrary of any such lease or other contract shall be binding only as between the parties thereto and shall not affect the obligations of said carrier either to the public or to the private parties concerned.

"A common carrier subject to the provisions of this Act is hereinafter referred to as an 'employer,' and the employees of one or more of such carriers are hereinafter referred to as 'employees.'

"The term 'controversy' as used in this Act shall be held to mean any dispute which shall arise between an employer and employees subject to this Act concerning wages, hours of labor, or other conditions of employment, or the respective privileges, rights, and duties of employer and employees (not involving any such violation thereof as constitutes an indictable offense), and which shall interrupt or threaten to interrupt the business in which they are engaged to the serious detriment of the public interest.

"The term 'lockout' as used in this Act shall be held to mean the closing of a place of employment, or a suspension of work, or a refusal by an employer to continue to employ any one or more of his employees in consequence of a controversy as above defined, or discriminating in the matter of continued employment for reasons other than personal skill, capacity, or fitness against any employee involved in such controversy, the same being done with a view to compelling his employees or to aid another employer in compelling his employees to accept terms of employment.

"The term 'strike' as used in this Act shall be held to mean the cessation of work by a body of employees acting in combination in consequence of a controversy as above defined, the same being done as a means of compelling their employer or to aid other employees in compelling their employer to accept terms of employment.

"SEC. 2. That whenever a controversy as hereinbefore defined concerning wages, hours of labor, or conditions of employment shall arise between an employer or employers and employees subject to this Act interrupting or threatening to interrupt the business of said employer or employers to the serious detriment of the public interest, either party both parties to such controversy may apply to shall immediately notify the Board of Mediation and Conciliation created by this Act and either party may apply to said board and invoke its services for the purpose of bringing about an amicable adjustment of the controversy; and upon the request of either party the said board shall with all practicable expedition put itself in communication with the parties to such controversy and shall use its best efforts, by mediation and conciliation, to bring them to an agreement; and if such efforts to bring about an amicable adjustment through mediation and conciliation shall be unsuccessful, the said board shall at once endeavor to induce the parties to submit their controversy to arbitration in accordance with the provisions of this Act.

"In any case in which an interruption of traffic is imminent and fraught with serious detriment to the public interest, the Board of Mediation and Conciliation may, if in its judgment such action seems desirable, shall proffer its services to the respective parties to the controversy.

"In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act either party to the said agreement may apply to the Board of Mediation and Conciliation for an expression of opinion from such board as to the meaning or application of such agreement, and the said board shall, upon receipt of such request, give its opinion as soon as may be practicable."

SEC. 2. That there be added at the end of said Act the following provisions:

"SEC. 12. That whenever a controversy shall arise between any employer and his or its employees which can not be settled through mediation and conciliation or by arbitration, in the manner provided in this Act, the President shall be notified by the Board of Mediation and Conciliation. The President shall thereupon appoint a board of inquiry of three members, to whom the controversy shall be immediately referred. The board of inquiry shall forthwith meet, elect one of its members chairman, appoint a secretary, make all necessary rules for the conduct of its work, and proceed to ascertain, so far as possible, all the facts and circumstances of the controversy. No person having a direct pecuniary interest in the controversy may be appointed a member of the board.

"As soon as may be, and in no event later than three months from the date of the reference of the controversy, the board of inquiry shall submit to the President or to the Board of



*Conciliation and Mediation, as the President may direct, a full report of its findings of fact, including its findings as to the cause of the controversy, together with a recommendation for a settlement according to the merits and substantial justice of the case; also the papers and a transcript of any testimony in the case. Upon the submission of its report the work of the board shall terminate. The report shall be forthwith published by the Board of Mediation and Conciliation.*

*"A majority of the board of inquiry shall constitute a quorum for the transaction of business and the finding or recommendation of the majority upon any point shall be deemed that of the board. Any vacancies in the board shall be filled by the President. The board, or any member or committee of members thereunto authorized, may hold hearings anywhere in the United States, and shall have power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, tariffs, schedules, contracts, agreements, and documents relating to any matter under investigation, without regard to the strict rules of evidence, and in case of disobedience to a subpoena may invoke the aid of any court of the United States to require the attendance and testimony of witnesses and the production of books, papers, contracts, and other records and documents, to the same extent and under the same conditions and penalties as is provided in section twelve of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and the amendments thereto. All testimony before the board shall be on oath or affirmation. Any member of the board or the secretary may administer oaths. Witnesses shall be paid the same fees and the same allowances for mileage as witnesses in the courts of the United States.*

*"The board of inquiry shall have power to employ such assistance, to rent such offices, and to purchase such furniture and such books, stationery, and other supplies as may be necessary to enable it to discharge its duties and as the Board of Mediation and Conciliation may authorize. Whenever practicable it shall be supplied with suitable quarters in any Federal building located at its place of meeting or deliberation.*

*"The compensation of the members of the board of inquiry shall be determined by the President or, if he shall so direct, by the Board of Mediation and Conciliation. The board itself shall determine the compensation of its secretary and of such other persons as it may lawfully employ and as the Board of Mediation and Conciliation may authorize. The members of the board and its employees in addition to their compensation shall be allowed traveling and other necessary expenses, to be approved by the chairman of the Board of Mediation and Conciliation and audited by the proper accounting officers of the Treasury. For these purposes so much as may be necessary of the appropriation of the Board of Mediation and Conciliation is hereby made available.*

*"Sec. 13. That pending the efforts of the Board of Mediation and Conciliation to settle the controversy through mediation or conciliation or by arbitration, or, where those means have failed, pending the investigation and publication of the report of the board of inquiry, and for thirty days thereafter, it shall be unlawful for the employees to declare or cause or practice a strike, or for the employer to declare or cause or practice a lockout. Any employer or officer or agent thereof violating this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than \$25,000 or imprisoned for not more than one year, or both, in the discretion of the court. Any employee violating this section, or any officer or agent of any organization of employees violating this section, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than \$1,000 or imprisoned not more than one year, or both, in the discretion of the court. Any person inciting, encouraging, or in any manner aiding any employer or employee to violate this section shall be deemed guilty of a misdemeanor and upon conviction shall be subject to the same punishment as the employer or employee, as the case may be.*

## COMMITTEE PRINT.

[S. —, Sixty-fourth Congress, second session.]

A BILL To authorize the President of the United States in certain emergencies to take possession of railroad, telephone, and telegraph lines, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case of actual or threatened war, insurrection, or invasion, or any emergency requiring the transportation of troops, military equipment, and supplies of the United States, the President of the United States, when in his judgment the public safety may require, is hereby authorized to take possession in whole or in part of any and all telephone and telegraph lines in the United States, their offices and appurtenances; to take possession in whole or in part of any or all railroad lines in the United States, their rolling stock, offices, shops, buildings, and*

all their appendages and appurtenances; to prescribe rules and regulations for the holding, using, and maintaining of the aforesaid railroad, telephone, and telegraph lines, or that portion of the same of which possession may be taken, in the manner most conducive to the safety and welfare of the United States; to draft into the military service of the United States and to place under military control any or all of the officers, agents, and employees of the railroad, telephone, or telegraph companies whose lines are so taken into possession; and said officers, agents, and employees shall be thenceforth considered as members of the Military Establishment of the United States, subject to all the restrictions imposed by the rules and articles of war.

SEC. 2. That the draft of the officers, agents, and employees of the said railroad, telephone, and telegraph lines shall be accomplished upon proclamation by the President declaring the occasion therefor, requiring all the officers, agents, or employees of any railroad, telephone, or telegraph company therein named to submit themselves to draft, and directing such officer or officers of the Military Establishment as he may select for the purpose to prepare, either by designation or by lot, as may be most expedient, a roster or rosters of the individual officers, agents, or employees so to be drafted. Upon the making of such roster or rosters notice shall be given to each person so enrolled of the place where and the time when he shall appear and enter upon his service; and any person who shall in any manner willfully evade the receipt of such notice, or who shall fail to present himself for duty at the time named therein, or within such time thereafter as may be necessary to accomplish his journey to the place appointed by the most expeditious route, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, in the discretion of the court.

SEC. 3. That the communication of intelligence over said telephone and telegraph lines and the transportation of troops, equipment, military property, and stores throughout the United States shall be conducted under the control and supervision of such officers as the President may designate; and whenever in his opinion the public safety no longer requires the continued possession by the United States of the said railroad, telephone, and telegraph lines the same shall be restored to the possession of the owners thereof, and the officers, agents, and employees drafted into the Military Establishment of the United States shall be discharged from further duty thereunder unless reenlisted in the manner and for purposes otherwise provided by law.

SEC. 4. That the damages suffered or the compensation to which any railroad, telephone, or telegraph company may be entitled by reason of the seizure and use of any portion of its lines or property under the authority conferred by this Act shall be assessed and determined by the Interstate Commerce Commission, due regard being had to the terms of any acts of land grant or contracts theretofore existing between any such company and the United States. And for the purpose of such assessment and determination the Interstate Commerce Commission is hereby vested with all the powers which it has now or may at the time be authorized by law to exercise in investigating and ascertaining the justice and reasonableness of freight, passenger, express, and mail rates, and in investigating and ascertaining the value of property owned or used by common carriers subject to the act to regulate commerce as amended. The finding by the Interstate Commerce Commission of the amount of such damages or compensation shall be final and conclusive, and the same shall thereupon be paid by the Secretary of the Treasury out of any funds in his hands not otherwise appropriated. All officers, agents, or employees of any railroad, telephone, or telegraph company who may be drafted into the Military Establishment of the United States hereunder shall, during the time that the United States is so in possession of the said railroad, telephone, or telegraph line, receive for their services rendered in connection with the use of the same such compensation as they were theretofore accustomed to receive for similar services.

SEC. 5. That any person or persons having in possession any portion of the railroad, telephone, or telegraph lines aforesaid, or the property thereunto appertaining, who shall refuse to surrender the same to the possession of the United States upon order of the President, or who shall resist or interfere with the unrestrained use by the United States of the property so taken into possession, or any portion of the same, and who shall injure or destroy or attempt to injure or destroy the property aforesaid, or any part thereof, while in the possession of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both, in the discretion of the court.

**THE UNDERWOOD BILL.**

[S. 7031, Sixty-fourth Congress, second session.]

A BILL To give the Interstate Commerce Commission the power to fix the hours of labor and determine wages for employees of carriers engaged in interstate and foreign commerce.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Interstate Commerce Commission shall have the power to fix the hours of labor and determine a just and reasonable wage for all employees who are now or may hereafter be employed by any common carrier which is now or may hereafter be actually engaged in the transportation of persons or property by rail from any State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and which is subject to the provisions of the act of February fourth, eighteen hundred and eighty-seven, entitled "An act to regulate commerce," as amended, except railroads independently owned and operated not exceeding one hundred miles in length: *Provided*, That the foregoing exception shall not apply to railroads though less than one hundred miles in length whose principal business is leasing or furnishing terminal or transfer facilities to other railroads, or are themselves engaged in transfers of freight between railroads or between railroads and industrial plants.

SEC. 2. That the rate of wages and the hours of labor provided for in this act shall remain fixed for service and pay until changed by the decision of the Interstate Commerce Commission, which, within a period of not less than six nor more than twelve months from the passage of this act, shall determine what are just and reasonable wages and what shall be the hours of labor for all employees of the railroads above mentioned.

SEC. 3. That the Interstate Commerce Commission shall have the power from time to time to change the hours of labor and the rate of wages for all employees of the railroads named in section one of this act, either in whole or in part, upon its own initiative, on the petition of the employees, the managers of the railroads, or the public.

**THE NEWLANDS AMENDMENT.**

[Amendment to H. R. 17700, Sixty-fourth Congress, first session.]

AMENDMENT Intended to be proposed by Mr. Newlands to the bill (H. R. 17700) to establish an eight-hour day for employees of carriers engaged in interstate and foreign commerce, and for other purposes, viz: Add at the end of the bill a new section as follows:

SEC. —.—Any person who shall knowingly and willfully obstruct or retard the operation of trains mentioned in section one of this act shall be guilty of a misdemeanor, and be punished by a fine not exceeding \$100, or imprisonment not exceeding six months, or both.

**TOWNSEND BILL.**

[S. 7066, Sixty-fourth Congress, second session.]

A BILL To provide for the investigation of controversies affecting interstate commerce, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever, within any State or States, Territory or Territories, or the District of Columbia, a controversy concerning wages, hours of labor, or conditions of employment shall arise, by reason of which controversy the transportation of the United States mails, the operations, civil or military, of the Government of the United States, or the free and regular movement of commerce among the several States and with foreign nations is, in the judgment of the President, interrupted or directly affected, or threatened with being so interrupted or directly affected, the President may, in his discretion, inquire into the same and investigate the causes thereof, in accordance with the provisions of this act.

SEC. 2. That to this end the President may appoint a special commission, not exceeding seven in number, of persons in his judgment specially qualified to conduct such an investigation. The Commissioner of Labor Statistics shall be ex officio secretary of the commission, and shall keep and preserve the proceedings of all commissions appointed under this act.

SEC. 3. That such commission shall promptly organize, and, upon giving reasonable notice to the parties to the controversy, shall either at the seat of disturbance or elsewhere, as it may deem most expedient, proceed with all convenient dispatch to investigate the causes of such controversy and the remedy therefor.

SEC. 4. That the parties to the controversy shall be entitled to be present in person or by counsel during the investigation and shall be entitled to a hearing thereon, in accordance with such rules of procedure as the commission may adopt; but nothing in this section contained shall be construed as entitling such parties to be present during the consultations of the commission.

SEC. 5. That for the purposes of this act the commission, or any one commissioner, shall have power to administer oaths and affirmations, to sign subpoenas, to require the testimony of witnesses either by attendance in person or by deposition, and to require the production of such books, papers, contracts, agreements, and documents as may be deemed essential to a just determination of the matters under investigation; and to this end the commission may invoke the aid of the courts of the United States to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents; and for the purposes of this section it shall be vested with the same powers, to the same extent, and under the same conditions and penalties as are vested in the Interstate Commerce Commission by the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and the acts amendatory thereof and in addition thereto, and all acts which may hereafter be enacted amendatory thereof or supplemental thereto: and it shall be the duty of the said courts of the United States to render said commission the same aid, to the same extent, and under the same conditions as is provided by said acts in aid of said Interstate Commerce Commission, and witnesses examined as aforesaid shall be subject to like duties as provided in said acts, but no witness shall be required to give any testimony incriminating himself, nor shall he be given any immunity: *Provided*, That no testimony given by him before any commission or commissioner shall be used as evidence against him in any criminal proceedings in any court, except in a prosecution for perjury committed in giving such testimony.

SEC. 6. That for the purposes of this act the commission may, whenever it deems it expedient, employ one or more competent experts to examine accounts, books, or official reports, or to examine and report on any matter material to the investigation in which such examination and report may be deemed of substantial assistance.

SEC. 7. That having made such investigation and ascertained the facts connected with the controversy into which it was appointed to inquire, the commission shall with all convenient dispatch formulate its report thereon, setting forth the facts and causes of the same, locating, so far as may be, the responsibility therefor, and making such specific recommendations as shall in its judgment put an end to such controversy or disturbance and prevent a recurrence thereof, suggesting any legislation which the case may seem to require.

SEC. 8. That the report of such commission shall forthwith be transmitted to the President and by him communicated, with such comments or further recommendations as he may see fit to make, to the principal parties responsible for the controversy or involved therein, and shall be duly transmitted to Congress for its information and action.

SEC. 9. That the commission may from time to time make or amend such general rules or orders as may be deemed appropriate for the order and regulation of its investigations and proceedings and adopt forms of notices and rules for service thereof.

SEC. 10. That the President is authorized and empowered to fix a reasonable compensation, not to exceed \$30 per day, for services, to be paid to the members of the commission from the Treasury at such times and in such manner as he shall direct. The commission shall have authority to employ and fix the compensation of such employees as it may find necessary to the proper performance of its duties. The commission shall be furnished by the Secretary of Labor with suitable offices and all necessary office supplies. Witnesses summoned before the commission shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation under this act, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the commission and the Secretary of Labor.

SEC. 11. That no commission appointed under this act shall continue for a period of over three months from the date of the appointment thereof.

Senator NEWLANDS. Notice has been given to the railway brotherhoods, the railroads' executives, and to the general public of this

hearing, and the attention of those who appear before this committee is directed to the various measures, and their views are requested by the committee.

I wish to ask now as to who desire to appear before the committee to-day, and whom they represent. I will first ask if the brotherhoods are represented here to-day.

Mr. P. J. McNAMARA (vice president, Brotherhood of Locomotive Firemen and Enginemen). Mr. Chairman, the executives of our organizations can not be here to-day. Whether they will appear or not I will advise you later. They are not able to appear to-day. If they are not able to attend they propose to give authority to some one to act for them later on.

The CHAIRMAN. I did not catch that statement.

Mr. McNAMARA. I say, if they are not able to appear here themselves then they will give their authority to their representatives, who are here, to act for them in this hearing. I shall later advise you after we get their message.

The CHAIRMAN. You are not prepared to state now who will appear on behalf of the railway brotherhoods?

Mr. McNAMARA. Not at this time.

The CHAIRMAN. Is there anyone representing the railway executives here?

Hon. CHARLES J. FAULKNER. Mr. Chairman, with reference to the question that is before the committee, especially the recommendations of the President, it is not the purpose of the railroads to appear with a view of discussing the principles involved in these measures. When the work proceeds further, and the language and provisions of the bill are being formulated, they may desire to make some suggestions to the committee. But so far as the principles of the bill are concerned they do not care about any hearing at this time.

The CHAIRMAN. Is the general public represented here?

Mr. EVERETT P. WHEELER. Mr. Chairman, I appear here for the Reform Club of New York, which has members in many States of the Union. It is very much interested in this legislation, as some of you have known in the past, and we appear and shall be glad to be heard in support of the recommendations of the President.

The CHAIRMAN. Are there any representatives of organized or unorganized labor present other than the brotherhoods?

Mr. ANDREW FURUSETH. Mr. Chairman, I want to appear for the seamen in the matter of this legislation. I do not know exactly how far it goes at present. The indication seems to be that it takes in the whole of transportation, and under those circumstances I would beg permission to appear for the seamen, not only against it, as far as the seamen are concerned, but against the principles involved in it.

The CHAIRMAN. Are there any others present who desire to be heard?

Mr. FRANK MORRISON (secretary American Federation of Labor). Mr. Chairman, I desire to say that the Federation of Labor will desire to be heard in opposition to any measure that may be passed along this line that carries with it compulsion of any character.

The CHAIRMAN. By whom will the Federation be represented at the hearing?

Mr. MORRISON. Probably President Gompers. He is out of the city at the present time.

The CHAIRMAN. Will he be here to-morrow?

Mr. MORRISON. That I will probably know to-day.

The CHAIRMAN. Will you please inform him that we are desirous of proceeding with this legislation as rapidly as possible?

Mr. MORRISON. If he is not here, some other member of the executive council will appear before your committee.

The CHAIRMAN. Is there anyone else who desires to be heard?

Mr. FRANK W. WHITCHER (of Boston, Mass., representing the Massachusetts State Board of Trade, the New England Shoe & Leather Association, the National Leather & Shoe Finders Association, with headquarters in St. Louis, the first two being in Massachusetts). Mr. Chairman, I appear in favor of the recommendations made by the President.

Mr. AMOS L. HATHAWAY (representing the Boston Chamber of Commerce). Mr. Chairman, we desire to be heard with reference to the recommendations of the President providing for an amendment of the present law in order that no strike or lockout may be ordered on railroads engaged in interstate commerce until an investigation has been made into the facts and a report made upon the merits of the controversy. We shall not approve compulsory arbitration, or argue for compulsory arbitration. If there is any compulsion, as suggested by one of the previous gentlemen here, that compulsion would bear, from our point of view, simply on the question of compelling a reference until a report could be made. We should like to be heard to-morrow, at the convenience of the committee.

The CHAIRMAN. Who will appear for this organization?

Mr. HATHAWAY. I will appear personally.

The CHAIRMAN. Are there any others who desire to be heard?

Mr. JAMES L. COWLES (World's Postal League). Mr. Chairman, I would like to be heard on this general subject at some time which suits the convenience of the committee.

Mr. ELLIOTT H. GOODWIN (secretary of the Chamber of Commerce of the United States). Mr. Chairman, the Chamber of Commerce of the United States has, through a committee on railroads, submitted a report to vote of all its constituent members upon this question. That referendum will not be completed until the end of the month. The committee supports generally the proposition made by the President of the United States. As soon as this report has been voted upon we shall ask the privilege of submitting the result of that vote to your committee. At the present time, it being merely a report of the committee and not being adopted or refused by the chambers of commerce, boards of trade, and trade organizations throughout the country, we shall not be in a position to make any presentation before this committee.

The CHAIRMAN. Is there anyone else who desires to be heard?

Mr. JAMES A. EMERY (representing the National Association of Manufacturers). Mr. Chairman, I would like to appear on behalf of the National Association of Manufacturers, and also a number of national bodies of shippers and employers, a list of which will be supplied to the committee at any time the opportunity is given for a hearing. We would like to be heard on the substantial principle involved in the President's proposition. As there is no definite meas-

ure which quite formulates in completeness the matter in legal form, I am not able to address myself to any specific project beyond the tentative proposition.

The CHAIRMAN. You will find here the tentative bill, what is known as the committee print.

Mr. EMERY. Yes, sir.

The CHAIRMAN. That covers the President's recommendations.

Mr. EMERY. The attitude of those whom I represent in the matter is that the shippers and employers—many thousands of them, employers of many millions of men, are interested on the one hand in the prevention of the interruption of commerce between the States by the act of a combination, and the second part, in maintaining the continued operation of their plants, upon which the employment of men is itself dependent. Those two propositions are the ones which we desire an opportunity to discuss, and the employers hope to discuss what we believe is of importance to the committee, and that is the power of Congress over such a proposition.

I expected that some of those people would be here this morning, but they have been detained for some reason.

The CHAIRMAN. Can you give the names of those whom you wish to appear?

Mr. EMERY. I shall have to let them do that personally as I am not sure about it. My preparation in this matter has been very much delayed by a very sudden and unexpected illness.

The CHAIRMAN. As I understand it, the representatives of the brotherhoods and the other labor organizations are not ready to proceed this morning, and the railroads do not wish to proceed.

Senator UNDERWOOD. I understood Mr. Wheeler to state that he was ready, Mr. Chairman.

Mr. WHEELER. Yes; I am ready, if the committee is pleased to hear me. I am at the disposal of the committee.

The CHAIRMAN. As to the matter of time, I would like to have the suggestions of the parties interested. There are three interested parties represented here, the general public, the railway brotherhoods, and the railway executives.

Mr. WHEELER. I can easily finish what I have to say in an hour.

Senator POMERENE. Mr. Chairman, I understand the committee adopted a rule whereby not exceeding two days were to be given to the brotherhoods, the same length of time to the railroads, and the same length of time to the public, if they desired it. It would seem to me, in view of the fact that this is a short session, that those who care to be heard ought to confine themselves within those limits.

Senator BRANDEGEE. I do not want to be considered by my silence as having the same understanding as Senator Pomerene has just expressed, Mr. Chairman. I was not aware that the committee had adopted any rule as to time within which the hearings must be closed.

Senator POMERENE. That was my recollection of it.

Senator BRANDEGEE. I say that was not my recollection.

Senator POMERENE. If I am mistaken I shall be glad to be corrected.

The CHAIRMAN. I remember that the matter was discussed.

Senator POMERENE. Has the clerk of the committee any note as to that? I know it was discussed, and I thought it was the conclusion we came to.

Senator CUMMINS. I move that the rule which the joint committee, under resolution 60, adopted with reference to interruptions and examinations by the committee be the rule of this committee for this hearing until otherwise ordered.

Senator UNDERWOOD. I do not think this committee ought to adopt that rule unless we go into executive session on the subject. This is a matter of legislation; the other was merely a matter of hearings. Of course if the committee adopts that rule I will agree to it, but I would not like to do that.

Senator CUMMINS. I am in favor of it, Mr. Chairman. You can either put the question on my motion or we can go into executive session and consider it.

Senator TOWNSEND. I do not know what that rule was. What was the rule?

Senator CUMMINS. The rule was that each witness be permitted to continue his remarks without interruption on the part of any member of the committee, and that at the conclusion of his statement or evidence, whatever it may be called, then each member of the committee should be permitted to interrogate the witness at pleasure in the order prescribed by the chairman. That is simply for the purpose of getting through at some time or other.

The CHAIRMAN. Mr. Wheeler, how much time do you desire?

Mr. WHEELER. I could easily finish what I have to say in an hour.

The CHAIRMAN. Mr. Emery, how much time do you desire?

Mr. EMERY. An hour will be quite enough for me, but I am, unfortunately, in no physical condition to discuss it to-day.

Senator BRANDEGEE. Mr. Chairman, we shall probably have to be on the floor at 12 o'clock to-day, and I think if Mr. Wheeler goes ahead for an hour, he may, in his remarks and cross-examination, use up the other half hour. I want to inquire if we are to have any rule while Mr. Wheeler's statement and examination is in progress, or are we free to ask him questions as he proceeds?

The CHAIRMAN. I understand that the committee is free, until a rule to the contrary is made, to question the witness. I think, however, that the much more orderly proceeding will be to hear him through.

Senator CUMMINS. I made a motion in that respect. If it is the desire of the committee to go into executive session in order to determine it, I am perfectly willing to do so, but I would like to have it determined.

Mr. WHITCHER. Mr. Chairman, if I may interrupt a moment, I desire to say that I came here hurriedly and it is quite important for me to return to Boston, if possible, to-night. I do not think it would take me over 15 or 20 minutes to say what I have to say, and if the opportunity could be afforded this morning, I would greatly appreciate it.

Mr. WHEELER. I shall be very glad to give way to my friend from Boston. I shall be here to-morrow.

The CHAIRMAN. Then we will hear Mr. Whitcher at this time.

Senator UNDERWOOD. Mr. Chairman, before Mr. Whitcher proceeds, I would like to say that I do not think we ought to determine the question raised by Senator Cummins at this time. We are having a hearing now, and if Senator Cummins insists upon his motion,



then I suggest that we go into executive session in order to discuss it. I do not desire that it be discussed before the public.

Senator TOWNSEND (to Senator Cummins). I suggest that you withdraw your motion until this gentlemen is heard.

Senator BRANDEGEE. The question will come up again in 15 minutes after Mr. Whitcher starts.

The CHAIRMAN. Do you make a motion that we go into executive session?

Senator UNDERWOOD. I do not care to go into executive session unless Senator Cummins insists upon his motion. If so, we can pass these witnesses over until to-morrow morning and discuss the question.

Senator CUMMINS. In view of the shortness of time, I will withhold my motion until after this witness has finished.

The CHAIRMAN. I wish to state that I desire to fairly apportion the time between the various interests, and for that reason I inquired about the time that each of those who will appear before the committee desired.

**STATEMENT OF MR. FRANK W. WHITCHER, REPRESENTING THE MASSACHUSETTS STATE BOARD OF TRADE AND NEW ENGLAND SHOE & LEATHER ASSOCIATION, BOSTON, MASS.**

Mr. WHITCHER. Mr. Chairman and gentlemen of the committee, I am here, as I stated, to represent the Massachusetts State Board of Trade, which is composed of 54 constituent bodies, boards of trade and chambers of commerce over our Commonwealth, and I will pass to the clerk these papers, giving at the head the names of the constituent bodies, of which there are 53, as follows:

*Massachusetts State Board of Trade* (organized October 30, 1890).—Frank W. Whitcher, president; George A. Fiel, secretary; Richard L. Gay, treasurer.

*Constituent bodies.*—Abington Board of Trade, Arlington Board of Trade, Beverly Board of Trade, Boston Board of Fire Underwriters, Boston Chamber of Commerce, Boston Market Gardeners Association, Boston Music Trade Association, Braintree Board of Trade, Brookline Board of Trade, Boston Wholesale Grocers Association, Cambridge Board of Trade, Chicopee Board of Trade, Dedham Business Association and Board of Trade, Everett Board of Trade, Fitchburg Board of Trade and Merchants' Association, Framingham Board of Trade, Gloucester Board of Trade, Haverhill Chamber of Commerce, Lawrence Chamber of Commerce, Leominster Chamber of Commerce, Lowell Board of Trade, Malden Board of Trade, Marlborough Board of Trade, Massachusetts Mutual Fire Insurance Union, Massachusetts State Pharmaceutical Association, Massachusetts Wholesale Lumber Association, Middleboro Commercial Club, Milford Board of Trade, Natick Commercial Club, Needham Business Association and Board of Trade, New Bedford Board of Trade, New England Dry Goods Association, New England Hardware Dealers' Association, New England Shoe and Leather Association, Newton Board of Trade, Norwood Board of Trade, Paint and Oil Club of New England, Peabody Board of Trade, Pilgrim Publicity Association, Quincy Board of Trade, Real Estate Exchange and Auction Board, Rockland Commercial Club, Salem Chamber of Commerce, Society of Master House Painters and Decorators of Massachusetts, Somerville Board of Trade, Springfield Board of Trade, Stoughton Board of Trade, Team Owners' Association, Waltham Board of Trade, Weymouth Board of Trade, Whitman Board of Trade.

There is one more that has joined since that paper was printed. I also offer my credentials from the New England Shoe & Leather Association. Those from the National Shoe Finders' Association I have not with me, because there was not time to procure them after

being notified of this meeting, but I am treasurer of that organization. Its headquarters are St. Louis, Mo., 704 Victoria Building.  
(The paper referred to is printed in full as follows.)

NEW ENGLAND SHOE & LEATHER ASSOCIATION,  
*Boston, Mass., December 30, 1916.*

*To whom it may concern:*

This will certify that Mr. Frank W. Whitчер, of Boston, has been duly appointed by President Harry I. Thayer as the official representative of the New England Shoe & Leather Association to attend the forthcoming congressional hearing in Washington, D. C., on the subject of the Newlands bill, and that Mr. Whitчер has full authority to present the views of the association thereon.

Very truly,

Attest:  
[SEAL.]

THOS. F. ANDERSON, *Secretary.*

This question of transportation and the possible blocking of transportation is one which is of such grave importance and which is causing so much consternation throughout New England that on the 22d of November our Massachusetts State Board of Trade held a meeting to consider this problem. Realizing the gravity of the situation, we decided to call a mass meeting of the business interests of our State, and that meeting was held at Springfield, Mass., on the 28th of December. I have with me a program of the meeting, giving the names of the speakers. The governor of the State, Hon. Frank W. McCall, presided, and there were men representing the manufacturing interests, transportation, railroads, and labor all present. The meeting was called for hearing from all sides, not to favor the railroads, not antagonistic to labor, but to ascertain the facts and to act for the good of the people of our Commonwealth.

I will pass this program to the stenographer.

Senator CUMMINS. Is it intended that all these things are to be published in full? I object to that.

Senator POMERENE. What benefit is that going to be to the committee?

Mr. WHITCHER. Simply to show the intense interest in the minds of the people of Massachusetts.

Senator POMERENE. So far as I am concerned it may be assumed there is an intense interest on both sides of the proposition.

Senator TOWNSEND. These are all one and the same thing?

Mr. WHITCHER. Yes, sir; there is just the one program. The result of that meeting was that resolutions were passed by the resolutions committee, and in the preamble it was stated that the proposed railway strikes or lockouts should be subject to investigation by the Interstate Commerce Commission. As a part of the resolutions, it was resolved that the Congress should enact such legislation as would prevent the stoppage of the business of the country through the machinery of strikes by railroad labor organizations or lockouts by the railways, and that such legislation should give to the Interstate Commerce Commission complete authority to conduct investigations into all contentions between the railway employees and their employers before a strike or lockout shall be ordered by the railway or labor-union organizations or their representatives.

I will pass a copy of these resolutions to the reporter, and wish especially to call attention to the resolution at the bottom of page 4. These are the resolutions in full.

(The resolutions referred to, here printed in full, follow.)

## MASSACHUSETTS STATE BOARDS OF TRADE.

PREAMBLE AND RESOLUTIONS FAVORING FEDERAL REGULATION OF RAILWAY RATES, INTERSTATE AND INTRASTATE FEDERAL CONTROL OF RAILWAY SECURITIES ISSUES—PROPOSED RAILWAY STRIKES OR LOCKOUTS SHOULD BE SUBJECT TO INVESTIGATION BY THE INTERSTATE COMMERCE COMMISSION—THE NEW HAVEN SHOULD RETAIN CONTROL OF ITS BOAT LINES—FAVOR INCREASE IN INTERSTATE COMMERCE COMMISSION MEMBERSHIP TO NINE.

The Massachusetts State Boards of Trade, comprising 53 commercial bodies representing a membership of 15,000 substantial business men, in convention assembled at Springfield, December 28, 1916, preamble the Congress and the President of the United States as follows:

Within the past few years the banking laws of the country have been thoroughly remodeled and a central agency established whereby the merchandizing of credit has been put upon a sound economic basis and the incongruities of the past done away with.

Not so with the railways. They are subject to 49 masters—the Federal Government and 48 individual State governments. Despite the fact that the railway business has grown essentially national in scope, railway regulation has remained local in character. It is true that the Government, through the Interstate Commerce Commission, controls the railways in so far as interstate traffic is concerned, and that State regulative commissions assume control merely of intrastate business. But the distinction between the two—interstate and intrastate—has become more artificial than real and serious conflicts have become more and more frequent.

Probably the most serious charge to be made against the dual system of regulation, as employed in the United States, is its inefficiency. It is unnecessarily costly, both to the Government and the railways, and consequently to the people. Conflicting regulations and laws are passed by various States through which the railways run, and it is often difficult and sometimes impossible for a railway to obey the law of one State without conflicting with the regulations of another. A prodigious waste of energy has resulted and a corresponding loss of power to serve the public.

The railways and the public suffer from present conditions. Railway development has come to a standstill, practically. The future of the country, and particularly during the next few years, demands a more enlightened policy. In the interest of New England as well as in the interest of the whole country we offer the following:

*Resolved by the Massachusetts State Board of Trade in convention assembled in the city of Springfield, December 28, 1916,* That the act to regulate commerce shall be so amended as to confer upon the Interstate Commerce Commission final authority over all rates and regulations which affect interstate commerce, whether such rates apply to interstate or intrastate shipments, and that in the event of conflict of jurisdiction between the Interstate Commerce Commission and the railway commissions of the several States that the jurisdiction of the Interstate Commerce Commission shall be final and conclusive.

*Resolved,* That in order to attract the necessary capital and to provide for the development of transportation facilities to meet the rapidly growing commercial needs of the country, and to develop its resources, Congress should enact such legislation as will restore the confidence of the investing public and guarantee the transportation service required to meet the needs of the public and that this confidence can only be secured by giving to the Interstate Commerce Commission final and conclusive authority in the matter of issuance of all railway securities.

*Resolved,* That Congress should enact such legislation as shall prevent a stoppage of the business of the country through the machinery of strikes by railway labor organizations or lockouts by the railways and that such legislation should give to the Interstate Commerce Commission complete authority to conduct investigations into all contentions between the railway employees and their employers before a strike or lockout shall be ordered by the railway or labor union organizations or their representatives.

*Resolved,* That we favor an increase in the membership of the Interstate Commerce Commission from seven to nine members as provided for in the bill which has passed the House of Representatives and is now before the United States Senate for final passage.

The Interstate Commerce Commission in a report just submitted to Congress says: "The New York, New Haven & Hartford Railroad system is made up of various formerly independent lines of rail and water carriers. By purchases and consolidations the New Haven company has become the owner of various water lines, operated

mainly between New England points and New York Harbor, which compete directly with its rail lines between the same points. There is no question as to the competition, but the record is replete with evidence from shippers and representatives of communities in New England to the effect that the service is in the interest of the public, is of advantage to the convenience and commerce of the people, and if the present ownership and operation is discontinued there will be no reasonably adequate service to take its place and the communities will be deprived of the benefits of the water transportation and the competing routes, thus inflicting upon them irreparable injury and benefiting no one.

"We think that these facts should be brought to the attention of the Congress, so that in the light of those facts it may determine whether or not authority shall be conferred upon the commission to permit, in such cases and under such circumstances, a continuance of the railroad ownership, control, or operation of the water lines, subject to such further and different orders as the commission may subsequently enter upon a further hearing and a showing of substantially changed circumstances and conditions."

There is no need to add to the statement of the Interstate Commerce Commission which discloses that the sentiment of the New England public is in favor of giving to the Interstate Commerce Commission the power to continue the present situation of railroad control both of the land lines and the Lake lines as well: Therefore be it

*Resolved*, That the Massachusetts State Board of Trade urge the Congress to pass the following amendment to the fourth paragraph of section 5, as amended August 24, 1912, of the act to regulate commerce, as follows:

"If the Interstate Commerce Commission shall be of the opinion that any such existing specified service by water other than through the Panama Canal is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, or that such extension will neither exclude, prevent, nor reduce competition in the route by water under consideration, the Interstate Commerce Commission may, by order, extend the time during which such service by water may continue to be operated beyond July 1, 1914."

*Resolved*, That a copy of this preamble and these resolutions be forwarded to each member of the House of Representatives, and the United States Senate and to the President of the United States.

JOHN H. CORCORAN,

*Chairman, Representing New England Dry Goods Association.*

Other members of committee on resolutions as follows: William Henry Gleason, Winchester, Mass., representing associated industries; Joseph Wing, Brookline, Mass., representing National Wool Manufacturers' Association; George F. Willet, Norwood, Mass., representing Norwood Board of Trade; Hon. Frank E. Stacy, Springfield, Mass., representing Springfield Board of Trade; F. Alexander Chandler, Boston, Mass., representing New England Hardware Dealers' Association; George L. Avery, Framingham, Mass., representing Framingham Board of Trade.

Senator BRANDEGEE. You say passed by the committee. Were they adopted by the conference?

Mr. WHITCHER. The report of the committee was received and the resolutions were adopted by the mass meeting of the business men of the State.

Now, the question arises, is it possible that the wheels of transportation can be stopped, and speaking for New England, where we are obliged to have imported from other parts of the country or brought in from other parts of the country 75 per cent of our food products and 75 per cent of our raw materials, as is stated, I think, in the last census, 1914, any stoppage of the wheels of transportation for a single day would work a great hardship both for want of food and for materials to run our factories. The milk supply is practically but one day; the community depends upon the daily running of the trains to bring the milk supplies into the city. The perishable foods we have a supply of for about a week. Those are the nearest I can ascertain to facts relating to our section, and our supply of nonperishable food would last in the vicinity of three to four weeks.

It was stated by the mayor of our city only a short time ago, if I recollect rightly, that the meat supply would only last three days he found after examination.

Senator BRANDEGEE. Did you get any statistics about the coal supply?

Mr. WHITCHER. I have information direct from the railroads upon that, sir. The anthracite coal supply was so short upon the Boston & Maine Railroad that an embargo was threatened, and I, as president of our Massachusetts State board, with the secretary and with one of the coal dealers from Waltham, called upon the president, Mr. Hustis, the acting receiver, perhaps you might say, of the Boston & Maine road; he was out, but we saw their traffic manager and told him that any embargo upon coal would create suffering and want if it was only carried out for a couple of days, as we had investigated the situation with the coal dealers and they told us that they were obliged to deliver small amounts, even down to 500 pounds of coal, to sprinkle it around amongst the people in order that they could be kept warm. That was early in December—I think I am correct about the date—when we called upon the railroad officials and got the embargo removed. The soft coal was in fair supply, but the anthracite was in such short supply that there would have been suffering if that embargo had continued.

Senator POMERENE. Due to what cause?

Mr. WHITCHER. Because of lack of transportation. There were cars at—I forget the junction point—but they could not transport it.

Senator POMERENE. Why not?

Mr. WHITCHER. Because they did not have means sufficient to transport it.

Senator POMERENE. Do you mean motive power? Do you mean they did not have sufficient motive power?

Mr. WHITCHER. No, there was so much congestion at the junction and at certain points of the road that they could not transport it all, and that was held up because of the congestion. But it only shows what would occur if the wheels of transportation were stopped.

If we were unable to obtain food supplies you gentlemen all know what suffering there would be in a community like New England, where all these supplies, or a large portion of them, have to be brought into the section.

The CHAIRMAN. What proportion of the food supply do you say comes from without?

Mr. WHITCHER. Seventy-five per cent.

The CHAIRMAN. And what proportion of the materials?

Mr. WHITCHER. Practically the same proportion. Our coal, of course, has to be brought in, our hides have to be brought in, our leather has to be brought in. Take the shoe factories, with which I am closely allied, they run so close to their supplies that even a day's delay in delivery of the materials which we supply to the shoe industry causes a shut down of the department where those goods are used. If the materials could not reach the mills to be used in time and it shut down those mills it would throw thousands and thousands of employees out of work. It would not only be so in the shoe industry, but it would also be true in other industries. The action of any body of men which would stop the wheels of transportation would act right against their own people detrimentally by throwing those people

out of work, and many, many times more than the body of people who would act to stop the wheels of transportation.

The industries of New England are, of necessity, obliged to run close to their supplies. Many of them depend upon the daily flow of transportation to their mills to receive the goods, and also, of course, to get them out and ship them over the country, and the injury which any stopping of the wheels of transportation by a small body would be multiplied and multiplied to a very large number of times that body which stopped the wheels of transportation. It injures their own people.

Gentlemen, we all know that the railroads started in a small way; they ran through a locality, a town started, and then they went on just like the branches of trees, a leaf comes out, so a town comes out and the whole country developed, and those towns and communities depend upon the whole of the transportation over the entire country just as the leaves of the trees depend upon the whole of the sap that flows through the branches of the trees to keep them alive, and the stopping of the sap or the stopping of the transportation makes the leaves wither and will make the towns suffer and the people in those towns suffer.

I can not urge upon you too strongly, gentlemen, the need of enacting laws which will absolutely prevent the stopping of the wheels of transportation. There are no bodies in the country who would be more fair to labor and do all that could be done for labor, but it seems to me, gentlemen, that this is a matter which goes beyond their own petty service. They should be broad enough to realize that the public health can not be made to suffer, that our whole fabric in this country is built upon these railroads, and that the whole transportation is absolutely necessary for the preservation of life. That is a different thing from a private enterprise where the public does not enter into it. It seems to me, gentlemen, that there should be some way by which men who go into that employ could sign up and make a contract, that, realizing the full situation, they enter into the contract beforehand, and that there should be no act on their part which would prevent the flow of transportation.

I am afraid I am taking more time, perhaps, than I should, but the seriousness of the situation, not only for New England but for a great many other parts of the country, is so great that such a condition should not be permitted as to have these wheels stopped and this flow of food, particularly for the infants, and this material for the mills, which would result in throwing out of employment their own people, thousands and thousands and thousands of them, more than can be thrown out or affected by those working upon the railroads. Such a condition should not be permitted, gentlemen, and I believe I am voicing your own feelings in this matter when I state that some law should be found which would absolutely keep the railroads running, and therefore I am here to favor the amendment offered by President Wilson, which will give the opportunity of investigation before it is possible for any strike to be called.

I do not know as I have anything further to say, gentlemen, excepting that I desire you to realize the feeling which we have in New England of the gravity of this situation and the great harm which would come, not only on account of health but to the workers them-

selves, as well as to the great public, which are the ones also to be injured.

I thank you, gentlemen.

Senator BRANDEGEE. Did your conference give any consideration to the question or were they advised as to the legal power of Congress to make it unlawful for men to quit work in a body?

Mr. WHITCHER. No, sir; I do not think that I recollect that. I shall be glad to answer any questions I am able to.

Senator CUMMINS. Mr. Whitcher, you described very graphically, and I think we all understand it, the consequences of a general stoppage of transportation, and what you want is some legislation that will prevent it, and you favor the recommendations of the President, as I understand it?

Mr. WHITCHER. Yes, sir.

Senator CUMMINS. And you understand that recommendation is that the right to strike shall be suspended until there is an investigation by some Government tribunal of the dispute?

Mr. WHITCHER. Yes, sir.

Senator CUMMINS. And the investigation is to be followed by a recommendation or a judgment in regard to the merits of the dispute?

Mr. WHITCHER. Yes, sir.

Senator CUMMINS. A strike after the recommendation is made would be just as fatal as before, would it not?

Mr. WHITCHER. Yes, sir; I think it would be, in a way, but it seems to me that preparation might be made which would lessen to some degree the effect of the strike, but I do not think our bodies would feel at all inclined to urge any compulsory action upon labor. Labor has its rights naturally, just the same as the railroads.

Senator CUMMINS. Then it is your idea that this lapse of time that will follow the investigation will enable the railroad companies to get ready for the strike and employ other men to operate the railroads? Is that the principal benefit of the legislation from your point of view?

Mr. WHITCHER. No, sir; I should not say that. I do not think the railroads would take steps to hire other men. I think the fact that a body of men were investigating and considering the question from both sides and bringing the different representatives to them would gradually soften the feeling which might have existed in the beginning, and that means will be found whereby conciliation and a settlement can be arrived at which will be very helpful and which has been demonstrated by the workings of the Canadian dispute, in which there were 85, if I recollect rightly, cases that have arisen during the last nine years, and only 7, if my figures are correct, and I think they are, resulted in a strike. It worked out that getting the people together face to face down over a table and trying conscientiously and earnestly to find a means which would be satisfactory alike to labor and the railroads has resulted in an amicable settlement of those things, and I believe that, and the publishing of the hearings before the public—the public opinion is an enormous factor in all these things, and I do not believe the public wants labor unjustly treated. I know our organization does not for a moment; we want labor to have all they are entitled to, and I want to go on record here that our organizations want labor to have all they are entitled to, but I do not think they should be entitled to something which is unreasonable or overreaching.

Senator CUMMINS. I am not discussing that phase of it. I am assuming everybody wants labor to have all labor is entitled to, and that everybody wants the railroads to have all they are entitled to. I am inquiring as to the basis of your belief that this plan will prevent. How many more railroad strikes have we had in this country the last five years than Canada has?

Mr. WHITCHER. I am not prepared with statistics to give you that, sir.

Senator CUMMINS. We have had no railroad strike of any proportion within the last five years, have we?

Mr. WHITCHER. Not that I remember.

Senator CUMMINS. How long has it been since there was a railway strike in this country that seriously interrupted business?

Mr. WHITCHER. I am not familiar, sir, with those statistics. I regret I had to come away so hastily that I am without that information.

Senator CUMMINS. You mentioned it as a fact that an opportunity for consultation and reflection and conference might be very effective in preventing a strike. How long did the men and the railroads have to consider and reflect and mediate prior to the passage of what is known as the Adamson law?

Mr. WHITCHER. I understood they did have some time, I can not tell you how many days or weeks, sir, but I do not think the public was brought into that. The public should be paramount in this thing.

Senator CUMMINS. That is not the question. I am trying to find out how the public can be served. You say it can be served, or think it can be served best by prohibiting a strike during a certain period. Is it not true that the discussion or controversy between the railway brotherhoods and the railway executives or managers was on for months prior to what seemed to be its climax last August?

Mr. WHITCHER. I could not say certainly about that because I was not in close touch with it, but it seems to me that whether it was or not there would be a great difference between the railways and the brotherhoods considering a matter themselves, or a commission on which the public had a reasonable representation to consider it in conjunction with the brotherhoods and the railway officials.

Senator CUMMINS. We will come to that in a moment. Is it not true that the public generally understood the character of the dispute between the railway brotherhoods and the railway executives?

Mr. WHITCHER. I do not think it was, sir, until very close to the strike time. There were occasional items in the papers, but I do not think the public woke up to the real situation.

Senator CUMMINS. Inasmuch as the matter was discussed in every possible way, as I remember it, and the issue very clearly stated, how would you give the public any better information with regard to such a subject than was given to the public in the newspapers in the last controversy?

Mr. WHITCHER. I do not think there could be any greater publicity than was given to it within two to three weeks, perhaps, of the threatened strike, of the culmination of the situation; but before that time it seemed to me as though a commission should have been appointed comprising the three parties interested, and the hearings started and published broadcast so that the public in general would have been interested.



Senator CUMMINS. You are aware that the Board of Mediation and Conciliation did all it could do to bring the parties to an agreement, are you not?

Mr. WHITCHER. I understood so, sir.

Senator CUMMINS. And failed either to secure an agreement amongst themselves or an agreement for arbitration. That is the fact, is it not?

Mr. WHITCHER. I think that is true.

Senator CUMMINS. What I can not understand is this, and I should be glad to have you explain it to me. Assuming now that the disaster which would follow the general arrest of transportation be even greater than you have described, and assuming that any such disaster must be prevented in some way, why is it that you do not insist upon a continuation of the prohibition of the strike after the board has investigated the dispute and has determined its merits, provided that judgment be against the railway men? Why should they be permitted to strike?

Mr. WHITCHER. That is a question, sir, which it seems to me leads up to the question of compulsory arbitration or compulsory action, and I should be averse to urging compulsion at any point. It seems to me that having a conference of the three parties interested, the public given as good a show as the railroads or the employees, the chances of arriving at satisfactory conclusions both to the railroads and to labor are excellent. To go to the point of compulsion, I can understand that it might affect the workingman as though it was acting upon his liberties, be detrimental to his liberty, and I feel that everyone should avoid taking any such steps if it is possible to do so.

Senator UNDERWOOD. You say you feel that way. Are you speaking for yourself or for the mass meeting you came down here to represent?

Mr. WHITCHER. I am speaking for the mass meeting in that respect.

Senator CUMMINS. But, constitutionally speaking, it is just as violative of the constitutional rights to prohibit a strike for three months as it is to prohibit a strike for three years, is it not?

Mr. WHITCHER. I do not think so when the matter is under consideration by all parties. The desired result to be reached is to satisfy all parties and to deal fairly by all parties, but the fact that the railroads serve the public makes it necessary that some way should be found where amicable adjustments can be had and I know our organization believes in the reasonableness of labor and of the others.

Senator CUMMINS. I assume that, but I never heard in our country of the issuance of a temporary injunction that could not finally ripen into a permanent injunction. That is the point that bothers me.

Mr. WHITCHER. I think it is bothering a great many. I do not think the country is ready to come to the compulsory situation even on the railroads. I feel that labor should be given every possible chance to agree with all of the other interests, and I speak for and I know I am voicing the sentiments of our people when I say they believe in the good judgment and in the common sense of our laboring men just as well as they do in the managing men, and some way could be found by getting together in the 60 days, or whatever time is allotted, by which those differences could be adjusted satisfactorily. If they can not, why then I do not know whether we would be ready

to say, "We are ready to stand a strike," or not. That is something we have not decided. But we should hope it would not reach the strike stage because of the suffering that would ensue, and it does not seem to me that the good judgment of labor would carry it to the point where they know suffering and strife would be caused by the steps they would take.

Senator BRANDEGEE. You suggested at one point in your remarks, that you thought it would be wise to have a law making it unlawful for railroad companies to employ men that did not agree in writing to serve for a particular length of time. Did I get your idea correctly?

Mr. WHITCHER. I am speaking individually, I would say, in connection with that. It seems to me though, that is I understand in some industries they have the employees sign, agreeing to certain conditions. It seems as though there could be a contract by which the employees would enter into an agreement, realizing the seriousness of any stoppage of the wheels of transportation, that they should resign peaceable if they were dissatisfied with the conditions that surrounded them.

Senator BRANDEGEE. You said that you advocated the plan proposed by the President, then you made this other suggestion which did not seem to me along that line.

Mr. WHITCHER. Our board of trade advocates that and the New England Shoe Leather Association and our National Leather & Shoe Finders Association also.

Senator TOWNSEND. That is, advocates the President's message?

Mr. WHITCHER. Yes, sir; as to the amendment that an investigation should be had before any strike should become effective, an investigation and report.

The CHAIRMAN. Is there any other member of the committee who wishes to question the witness?

Mr. Whitcher, you realize, do you not, that there is nothing in the President's recommendation to prevent any individual upon a railroad from giving up his employment?

Mr. WHITCHER. Yes, sir.

The CHAIRMAN. That the only purpose is to prevent combined action which would result in the paralysis of transportation?

Mr. WHITCHER. Yes, sir.

The CHAIRMAN. During the period of investigation and for a reasonable period thereafter. You realize that, do you not?

Mr. WHITCHER. Yes, sir; I do.

The CHAIRMAN. That is all.

Senator POMERENE. May I ask one further question? You spoke of the Canadian situation. Do you know to what extent the public in Canada has accepted this plan of adjustment?

Mr. WHITCHER. I have been told by those whom I know to be fully informed that the public felt it was a very excellent method, and I know it has been continued further since the war in other lines, I think in mining and in some lines of munitions manufacture, and that it has satisfied them better than in any other form which previously existed there or which they knew of. In fact, I may have positive figures here. It has been carried into mines and into light and power, municipal public utilities, and it has affected coal

mines and metal mines, street railways, shipping, commercial telegraphy, and telephones.

Senator POMERENE. What I have in mind particularly is this: I have heard the statement made that this plan was satisfactory to the railroads, but that it was unsatisfactory to the employees. Now, what I want to know is to what extent it had been accepted as a satisfactory solution of the differences between employer and employee by the public generally in Canada.

Mr. WHITCHER. It is my understanding that it is thought very favorably of by the public of Canada.

The CHAIRMAN. That is all, Mr. Whitcher.

Mr. WHITCHER. I thank you very much for giving me the opportunity this morning of appearing before the committee.

The CHAIRMAN. Are there any others present who wish to be heard other than those who have already announced such desire?

Mr. CHAMBERS. Mr. Chairman, I have here a brief statement that I would like to make in connection with the report upon the study of the question of mediation and arbitration, which has been prepared by the Board of Arbitration. I have it in print and wish to present it to the committee. I have copies enough for each member of the committee.

The CHAIRMAN. The committee will call upon you later to present that, Mr. Chambers.

Mr. CHAMBERS. Very well.

The CHAIRMAN. Mr. Wheeler, are you ready to proceed?

# **STATEMENT OF MR. EVERETT P. WHEELER, ON BEHALF OF THE COMMITTEE ON INDUSTRIAL ARBITRATION OF THE REFORM CLUB, NEW YORK CITY.**

The CHAIRMAN. You may proceed, Mr. Wheeler.

Mr. WHEELER. I appear on behalf of the industrial arbitration committee of the Reform Club. That club was organized in New York in 1888. It has members in almost every State in the Union; it has made its business to cooperate as far as we could in the various movements for administrative and legislative reform. We were active in the old tariff reform campaign, as some of you, I think the Senator from Alabama, may remember. We were active in the campaign for sounder money, and we have taken a great deal of interest in improving our municipal conditions in the great cities, and we feel there is nothing of more importance than this we are now endeavoring to assist the committee in doing.

Without going into the details of particular bills, which we have not had opportunity to examine but which we should be very glad to cooperate in working out if it is desired, I may say that we cordially approve the President's recommendations.

I had prepared a brief, which deals somewhat in detail with the conditions as they existed at the time this strike was ordered in August last, but that has been gone over a good deal here to-day. I see the members of the committee have it fresh in mind, and while I will ask permission to have this brief included in the proceedings and will hand it to the clerk, I will not read it at this time.

(The paper referred to is here printed in full, as follows:)

## INDUSTRIAL ARBITRATION AND STRIKES.

EVERETT P. WHEELER.

The President of the United States addressed Congress in August last. To use his own expression, he took "counsel with the Representatives of the Nation with regard to the best means of providing, so far as it might prove possible to provide, against the recurrence of such unhappy situations in the future, the best and most practicable means of securing calm and fair arbitration of all industrial disputes in the days to come." The six specific recommendations which he then presented to Congress may, perhaps, be summed up in one. He urged that ample provision be made for a tribunal to which industrial disputes arising between common carriers and their employees should be submitted, a tribunal vested with ample power to decide these disputes, and that neither party should have the right to take the law into its own hands before the decision of the industrial court. These recommendations we cordially support.

All parties to these controversies should realize that they are public servants, that the railroads are a necessary part of the national life, and that all engaged in their management and operation are charged with a public duty. No one is obliged to become a railway manager or to become an engineer, conductor, or fireman. Whoever does engage in either of these necessary occupations should realize that his first duty is to the public. The employers, on the one side, are organized into corporations; the engineers are organized in their union; the conductors and trainmen in theirs; and so are the other members in the different lines of the service. These organizations ought not to be hostile. There ought not to be a feeling on either side that it is necessary to fight the other. It is inevitable that differences should arise. Each party will naturally desire to get the most it can; but the question for the public and for our Representatives in Congress to settle is whether this inevitable difference shall be settled, as Mr. Julius Henry Cohen puts it, "on the plan of the savage or on the plan of civilization."

A strike is war. It is sometimes bloody; it is always costly. It is harmful to both sides, often as much so to the men as to the employers, yet, as the very able brief which has been prepared for the National Consumers' League puts it, "if strikes are to be avoided, the State should provide a method of adjudication which can give to the employees the relief now secured, if at all, by strikes and at the cost of inconvenience or danger to society."

My associates in the Reform Club believe that this task, so difficult, is not impossible. We desire to represent the public interest, and we are persuaded that in the long run it will be found that the real interest of railroad managers and of railroad men is identical with the interest of the public.

And now permit me very briefly to review the facts which have led the President to urge upon Congress on two successive occasions the enactment of this legislation.

There are four secret orders in this country: The Order of Railway Conductors, the Brotherhood of Railway Engineers, the Brotherhood of Railway Firemen, and the Brotherhood of Railway Trainmen. Their deliberations are not open to the public and our citizens have no voice in their councils. Their members render services of great importance to the public and are among our best paid workmen—as they ought to be. The average wages of engineers are \$1,750 per annum; of conductors \$1,500; of firemen \$1,030; and of brakemen \$1,000. Their wages have increased steadily since the year 1900.

In the year 1913 a bill was introduced in Congress, the passage of which was advocated by three chiefs of these orders, Garretson, Carter, and Stone. It became a law and is known as the Newlands Act. With this act you are familiar. When it was under consideration by this committee, Mr. Stone, the chief of the Brotherhood of Railway Engineers, said to the committee:

"There is not any question about the power of these organizations (the brotherhoods), and there is not any question that they believe in the justice and equity of their position, and if this plan we propose here is something which both parties can get together on and have industrial peace, then it seems to me that in all fairness for the great class of men we are trying to represent, and you men who are looking after the interests of these 28,000,000 men who are served by the railroads in this eastern territory, that this bill should be passed. When you are arbitrating under the law you have a moral effect you do not get in any other way."

On the 1st of June, 1916, a conference between the railway managers and the officers of these four secret orders began in New York City. The chiefs of the orders demanded (let the word be noted) 10 hours' pay for 8 hours or less service for all freight and yard service, overtime to be paid for at one and a half times this new high hourly rate. This would increase the hourly pay by 25 per cent, the overtime paid by 87½ per cent.

The railroad managers refused to yield to this demand, but offered to submit the question and all other questions in difference to the board of arbitration created by the act before referred to. On the 7th of August they requested the board of mediation to intervene and endeavor to bring the respective parties to an agreement. The chiefs of the secret orders refused the proposition for arbitration and refused to accept the mediation of the board.

On the 13th of August President Wilson wrote the chairman of the National Committee of Railways and the four chiefs of the secret orders the following letter:

"A general strike on the railways would at any time have a most far-reaching and injurious effect upon the country. At this time the effect might be disastrous. I feel that I have the right, therefore, to request, and I do hereby request, as the head of the Government, that before any final decision is arrived at I may have a personal conference with you here."

Accordingly, the managers of the railways and the chiefs of the orders went to Washington and conferred with the President. It was claimed by the railroad companies that the increase in wages which was demanded would increase their expenses \$100,000,000 a year. The orders admitted that it would increase expenses as much as \$25,000,000 a year. In either case it was clear that the money would be paid by the public.

Here, then, we have a case where it was demanded that the people of the United States should pay the sum of at least \$25,000,000 and probably much more, without being in any way consulted.

The chiefs of the brotherhoods on the 14th of August prepared a joint order to all members, in which they say:

"Your representatives have been unable to effect a satisfactory settlement, and a strike under the laws of the respective organizations becomes effective on —, at 7 a. m. Impart this information so that those interested will understand that they are to promptly obey."

Meanwhile, however, negotiations were pending with the President. When he found that the railroad brotherhoods refused to arbitrate the demand for an eight-hour day, he addressed Congress in joint session on the 29th of August. In this address he says:

"The men absolutely declined arbitration, especially if any of their established provisions were by that means to be drawn again in question. The law in the matter put no compulsion upon them.

"The 400,000 men from whom the demands proceeded had voted to strike if their demands were refused; the strike was imminent; it has since been set for the 4th of September next. It affects the men who man the freight trains on practically every railway in the country.

"The freight service throughout the United States must stand still until their places are filled, if, indeed, it should prove possible to fill them at all. Cities will be cut off from their food supplies, the whole commerce of the Nation will be paralyzed, men of every sort and occupation will be thrown out of employment, countless thousands will in all likelihood be brought, it may be, to the very point of starvation, and a tragical national calamity brought on, to be added to the other distresses of the time because no basis of accommodation or settlement has been found."

Meanwhile, the chiefs of the orders had issued their commands to "all local chairmen, members, and others employed in classes of service represented" by the four orders, much extending their original demand. Let me quote:

"1. No man in road service involved in the strike will perform any service after the hour set to strike unless he has already begun his trip and has actually left the terminal.

\* \* \* \* \*

"So far as your legal right to strike is concerned, there is no difference between a mail train and a freight train. You have identically the same right to refuse to perform service on a mail train as you have to refuse to perform service on a freight train."

Then comes provisions for secret meetings of the strikers, instructions not to engage in acts of violence, and the following drastic clause:

"5. Clearly defined cases of disloyalty or inefficiency on the part of any representative of the organization should be reported to the other organizations, and necessary action either as to discipline or to safety measures taken at once."

The means of enforcing discipline no doubt include a forfeiture of all interest in the funds of the brotherhood for the member who should be faithful to his duty rather than obey the orders of the union chief.

The President did not in his address to Congress refer to the broad scope of this order. The extension of the strike to mail trains may not have been brought to his notice. His recommendations to Congress are before you and I need not repeat them. The Adamson bill passed both Houses and the strike order was rescinded. Its construc-

tion and validity are now under consideration by the courts, and I need not refer to them.

On the day on which the President addressed Congress a bill was introduced reenacting, with some amendments, the provisions of the Newlands Act of 1913, and adding another section, which provides that any officer of a railroad who should declare a lockout and any officer of any labor organization who should declare a strike before the arbitration should be guilty of a misdemeanor and subject to fine.

The real question for you to consider is whether legislation of this character shall now be recommended by this committee. The motto of the Committee on Industrial Arbitration is, "Prevention is better than cure." We wish to prevent strikes. The tendency in strikes is to look solely at the immediate interests of the employer and employees, respectively. But you will first consider the public welfare and remember the duty that every good citizen owes to the community of which he is a part.

1. The railroad unions appear to forget the nature of their employment. The carriage of passengers and freight and of the mails from one State to another and from the United States to foreign countries is a public service. It is regulated by law and subject to the control of Congress and of the Interstate Commerce Commission. The law provides for a board of mediation, and for a tribunal of arbitration if the board of mediation fail to accomplish a settlement. All this is done that the transportation of mails, passengers, and freight may be unimpeded. That is the circulation of the blood of the country and essential to its welfare. The great cities can not keep stores of food on hand sufficient to stand a siege. They are dependent upon the peaceful and usual methods of obtaining supplies, not only for the men and women, but for the children. Therefore it is the duty of employers and employees alike to serve the public. The old phrase, "The public be damned," is just as wicked in the mouth of the chief of a railroad union as it was in the mouth of a railroad president.

2. Nobody is obliged to go into the business of a common carrier, either as employer or employee. The firemen, brakemen, engineers, and conductors all enlist voluntarily. They assume obligations to the public which they can not ignore.

3. The position thus assumed by them is not "compulsory servitude," nor would a law compelling them to keep their contract reduce them to compulsory servitude. This contract is valid, even though not in writing. If irreparable injury should be caused by its violation, the court can enjoin such violation. In the case of seamen, the United States Supreme Court has held that an act compelling a seaman who has deserted to return to his ship does not reduce him to involuntary servitude. This is put on the ground that he voluntarily entered the service. The court said (*Robertson v. Baldwin*, 165 U. S., 281):

"A service which was knowingly and willingly entered into could not be called involuntarily."

The court also pointed out that it is necessary for the public welfare, the safety of passengers, and the delivery of freight that a ship's crew should perform their contract. It is just as essential to the safety and welfare of passengers and freighters that trains should be run through to their destination as it is that a ship should run through to hers. A carrier by land is just as much a common carrier as a carrier by sea, and subject to the same rules. This was held by the Supreme Court in the *Debs* case, hereinafter quoted.

It is important to notice that when conductors, engineers, and the rest quit their employment they do it in obedience to "orders." These orders are peremptory. Any restraint exercised by statute would be a restraint upon the leaders, prohibiting them from giving orders to the men to strike. These leaders are not engineers or conductors or trainmen. They draw their salaries from the union treasury. It is not compulsory servitude to prevent them from interfering with the public service. An act for this purpose was passed in Canada in 1907. The law was amended in 1910. President Eliot styled the act "The best piece of legislation ever adopted to promote industrial peace." To use the language of Mr. King, former Canadian minister of labor:

"The act provides that where a strike or lockout is threatened in any one of these industries (railroads, steamships, telegraph and telephone lines, and mines) before such a strike or lockout can legally take place the parties must refer their differences to a board for settlement."

In Canada each party to the dispute appoints a member of the board of arbitration. If the two can agree upon a chairman, they appoint him. If not, he is appointed by the minister of labor. The adoption of a similar statute prohibiting a lockout or a strike by persons in any public service is vital to the American people, and when properly considered is in the real interest of every honest workman.

4. The question now recurs, What can the President do to prevent a strike? What authority should be conferred upon him? In considering this question I first notice the proposition that strikes are legal. Courts in this country have used language to that effect, but the language was employed before the passage of the Newlands

Act. This provides a tribunal for settling the differences between common carriers and their employees. In view of the public duty which is incumbent upon all persons engaged in public service and of the fact that the business of the common carrier is a public service, it seems to me clear that resort to the means of settlement thus provided by law is obligatory upon both parties. The injury to the public from a strike on interstate railways is incalculable. The injury to individuals if it does not take place is slight. At most there is delay pending the arbitration.

It has been said that the principle of the eight-hour day can not be arbitrated. Possibly in most trades eight hours is a desirable limit for labor. But it is obvious that such a limit is impossible in the management of railroads. An engineer or conductor should not be allowed to leave his train midway between stations because he has already served the company for eight hours. That not only would leave the passengers or freight in the lurch, but would constitute an obstruction to the passage of other trains. It is just as essential to a railroad to keep its trains in motion as it is to the human being to keep the blood in circulation. Therefore, what the unions really contended for was an increase of wages. This they have got by act of Congress. They have nominally got an eight-hour day, but really they have nothing of the sort. There is not one word in the act to prevent the engineer or conductor from remaining for more than eight hours in the service of the company, or to prevent the company from employing him to work for more than eight hours, and if he does work more than eight hours he is not entitled to any increase in his rate of pay. It is obvious, therefore, that the claim that the reduction of the hours of labor is a vital principle and can not be arbitrated has no foundation whatever as applied to railroads. We must, therefore, discard that from further consideration.

Then what we find is this, that a group of men, in order to obtain more money for themselves and their associates, claimed the right to combine to prevent the faithful execution of the laws of the United States. These laws require railroads to transport passengers, mails, and freight in interstate commerce. The United States Revised Statutes (sec. 3964) make them post roads. The Constitution of the United States makes it the duty of the President to take care that the laws of the United States be faithfully executed. His oath of office binds him to do this.

In 1894 Mr. Cleveland was confronted by a similar emergency. He directed the Attorney General to bring a suit to restrain the leaders of the American Railway Union, of which Eugene V. Debs was president, and which had then an enrollment of about 150,000 members, from obstructing interstate commerce and from interfering with the transportation of the mails. The injunction was granted. Debs and his associates violated it, and were arrested and committed for contempt. They were also indicted for their unlawful combination to obstruct the mails and interstate commerce.

The action of President Cleveland in this matter was approved and the orders of the court affirmed by the Supreme Court of the United States (*In re Debs*, 158 U. S., 564). The course adopted by the President broke up the strike and enabled interstate commerce to be carried on peacefully and the mails to be transported punctually. To use Debs's own words:

"As soon as the employees found that we were arrested and taken from the scene of action they became demoralized, and that ended the strike."

The laws on this subject that were in force in 1894 have been in substance reenacted in the Criminal Code of the United States. Section 19 of this code makes it an offense to "conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States." One of the most important of these rights is to communicate by mail with other citizens, to travel, and to ship and receive goods.

Section 37 of the Criminal Code makes it an offense to conspire to commit any offense against the United States.

Section 201 of the same code makes it an offense to "knowingly or willfully obstruct or retard the passage of the mail \* \* \* or car, steamboat, or other conveyance or vessel carrying the same."

All these offenses are punishable by fine and imprisonment. The authority of the courts, civil and criminal, can be invoked as it was invoked in 1894. The men who conspire to commit these offenses can be arrested. An order of injunction against them can be obtained.

5. It may be argued in reply that section 20 of the Clayton Act (38 U. S. Stats., 738) restrains the power of the courts to issue injunctions in controversies between labor unions and their employers. To this there are three answers:

(1) The act does not apply to suits brought by the United States. It is, by its terms, applicable only to suits "between an employer and employee." Section 24, in reference to contempts, expressly excepts suits prosecuted by the United States.

(2) The act does not prohibit an injunction against "orders" from chiefs to their subordinates, the effect of which would be to destroy commerce and starve the cities. It does not in terms apply to railroad service at all. It should be construed in connection with the other statutes regulating commerce, making the railroads post roads, and charging the United States with the duty of keeping them free from obstruction.

(3) If the clause of the Clayton Act referred to is otherwise construed, it is, in my judgment, unconstitutional. It would deprive railroad companies and the public who use the railroads of liberty and property without due process of law. The writ of injunction is as much due process of law as the writ of habeas corpus. Its whole object is to prevent parties from taking the law into their own hands. It preserves existing conditions, restrains parties from violently changing them, and brings the whole matter to the consideration of the court where the rights of the parties are finally adjudged.

*Erhardt v. Boars* (113 U. S., 537); *Atlantic & Pacific Tel. Co. v. Baltimore & Ohio R. R.* (14 Jones & Spencer (N. Y.), 377).

Congress has no power to deprive any citizen of the United States of the right to this writ. It can, no doubt, prescribe, as it has done, that the order of injunction should not be granted except on sufficient evidence. The statute on this subject formulates the practice of experienced judges. Possibly in some cases the injunctions had been hastily granted and it was wise that Congress should make express provision that none should be granted without positive proof. But that is a different thing from denying the right to an injunction. It is competent for a legislature, in the interests of public health, to regulate the manner in which a house shall be built, but no legislature has the right to deprive a citizen of the right to build a house. In like manner, while a legislature has the right to regulate the method of issuing an injunction, no legislature has the power to take away altogether the right to an injunction.

6. One of the most mischievous arguments that have been advanced by the unions is the allegation that the interests of the "American public" and the "railway stockholders" is different. The argument, if it means anything, is that it would be lawful to confiscate the property of the stockholders in the railroads if this would benefit the members of the four secret orders. The argument they advertised last August contained the truthful statement that some persons owned stock in more than one road and that some railroad companies owned stock in other transportation companies. This does not change the fact that there are a great many small stockholders, numbering at least 300,000, and that the persons who own stock in the holding companies have thereby an interest in the stock of the companies which is held. For example, the statement alleged that the Pennsylvania Railroad was a stockholder in "at least 72 other transportation companies." This may be true, but the Pennsylvania Railroad Co. incorporates a great number of stockholders, many of whom are widows and many of whom are men whose hard earnings are invested in this stock. The value of their stock is derived in part from the value of the properties owned by the company. It is therefore fallacious to treat the ownership of the Pennsylvania Railroad Co. as if that were a being entirely distinct from the persons who own stock in it.

The attack is simply an appeal to prejudice. One principle of American democracy is that the property which an individual has earned or accumulated by saving is to be protected. His right to protection is a personal right. Without any property the individual is as helpless as the tramp who begs for a meal at your door. Is it right for Stone, Garretson, and their associates to deprive the people who have invested their hard earnings in the stock of the railroad companies of a fair return on their investment in order to increase the pay of men who already receive much more than the average income of American citizens?

7. There are two fundamental errors that pervade the argument in favor of the right to strike. One is that there is war between labor and capital and that, therefore, the right to strike should be preserved, because it is an important weapon in this war. The assumption is false. There is no real conflict between the interests of labor and capital, nor is there any capitalistic group at war with the interests of labor. There are selfish and greedy capitalists, and there are selfish and greedy labor leaders. But throughout the country you will find intelligent, public-spirited capitalists doing all in their power to promote the welfare of their employees. Moreover, the groups interlace. Many employees have saved money and own stock in corporations or put money in savings banks, which in their turn own corporate securities. Thus the employees become capitalists.

The statement often made that the improvement that has taken place in the conditions under which laboring people work is entirely due to the unions, is historically untrue. The greatest improvements have not been effected by the unions. They have fought for more pay in factories and railways, and for shorter hours, but very



rarely for better conditions. For example, out of 321 strikes reported to the Bureau of Labor statistics in October last, only 14 were on account of conditions solely, and only 17 were related to conditions in any way. The provisions for social betterment that are to be found in the best corporate establishments, railroads, publishing houses, terminal companies, factories, and department stores have never been asked by labor unions, but they have done a great deal to promote the health and comfort of laboring men and women.

The other fundamental fallacy is that "the labor of a human being is not a commodity." Like most fallacies, this has an element of truth. If it be meant that the life and labor of a human being should be more sacred than any piece of material property, it is true. But, if it be meant that the man who has contracted to render service to another is under no obligation to keep his contract, and that the right to have him keep his contract is not a right which the courts can enforce, it is untrue. Take the other side. If a man has contracted with an employer for a term of years, the employer has no right to discharge him without cause. The employee, if he is discharged, has a remedy in the courts. His labor is a right which has money value and which the courts will protect. How can we say that an article which has money value and which is protected by the courts is not a commodity? Honest performance of contracts is essential to civilization. The Psalmist describes the good man as one "that sweareth to his neighbor and disappointed him not, though it were to his own hindrance." This character is just as necessary and admirable in the workman as in the employer.

The supreme court of Massachusetts has just decided, in a lawsuit between two labor unions (*Bagni v. Perotti*, 112 N. E., 853), that the right to labor and to make contracts to work is a property right and can not be divested by act of legislature without compensation.

In opposition to these fallacies, I maintain that the interests of labor and capital are identical; that they should be regulated by law; that both sides should obey the law and be subject to its dominion. A strike is war. It is sometimes bloody and always cruel. It is generally injurious to the strikers as well as to their employers, and often degenerates into a mere contest of obstinate will and endurance on one side and the other. Men get set in their way and will not listen to reason. The more complicated society becomes the more important is it that this temper of the human mind should be controlled and subjected to law. We have made laws regulating and controlling railroad companies. Railroad unions should not be a privileged class.

The most sacred relations of life, those of husband and wife and of parent and child, are regulated by law and subject to the control and order of the courts. The right of a man to work or not to work, and to get adequate wages and to labor under reasonable and healthful conditions is no more sacred than those I have mentioned. It is really for the interests of all parties that we should have peace in civil society and that any controversies which may arise, however serious or sacred they may be, should be settled in a peaceful manner. That is the great lesson of the threatened strike of 1916. To quote again from President Wilson: "This situation must never be allowed to arise again."

8. One other important point remains to be considered. These railroad unions have become organizations of wealth and power. It is asserted on good authority, and I have seen no denial, that they have \$1,500,000 in cash in their treasury, beside many other available assets. The best available information would indicate that they disburse as much as \$2,000,000 a year in benefits to their members and members' families. Their annual income is not disclosed. Their membership is about 400,000. The dues can hardly be less than \$1 a month. That would make an annual income of \$4,800,000. Certainly such rich and powerful organizations ought to be subject to some public investigation and control. The same rules that have been applied to corporations, many of which have smaller incomes than these unions, should be applied to them. The Department of Labor should require from them an annual report of their receipts and disbursements, their membership, and such other particulars as are of interest to the public, and to their members who pay dues. The chiefs of these powerful organizations are not perfect men. Their members have really no supervision over the expenditure of money by the chiefs, what salaries they receive, what expenses they charge to the organization, what pickings they may consider legitimate. It is as much in the interest of labor as of the public that these organizations should be subject to law.

In a free country no citizen or group of citizens, however well-intentioned or however powerful, should be exempt from the law. Hitherto the activity of the chiefs of these organizations has been to exempt them from legal control. They have urged the passage of a law that the Sherman Act, forbidding combinations in restraint of trade, should not apply to them. They have urged the passage of a law that the writ

of injunction should not apply to them. All such steps are in the wrong direction. If the Sherman law is wise, it is wise for all citizens. If it is unwise, it should be amended or repealed. In like manner, no citizen should be exempt from the control of the courts of justice. Ample remedy by appeal is provided for an alleged mistake, committed by a single judge. If he does willful wrong he may be impeached and removed. The question is not the character of individual judges, but of the supremacy of law. The control of every individual by the courts, and their power to protect the individual in his rights, and to punish any who seek to violate these rights, are essential to the welfare of the workingman. They are needed to protect the hard-earned dollars that he puts in the savings bank and every improvement that he makes in the condition of his wife and children, when there is industrial war, it is they who are first to suffer.

I have shown that there is ample power to legislate so as to prevent strikes. But I am equally earnest to prevent any just occasion for strikes; and to remove every just cause of complaint against arbitration.

One grievance alleged is that the awards of industrial courts are enforced only by one party to the contest. It seems to me that this cause of complaint is removed by the Newlands Act. Section 4 provides that the award is to be filed in the district court of the United States and is to be final and conclusive. Section 8 provides for making the award the judgment of the court. Under sections 4 and 6 the board of arbitration can be reconvened and "any difference arising as to the meaning of the application of the provisions of an award," be referred back to the board.

The United States district court is thus vested with power to supervise the performance of an award, and to compel obedience to its provisions as construed by the board of arbitration.

Another grievance that is sometimes referred to in public discussions is very real; that is, the apprehension of arbitrary discharge. It is often suspected, whether justly or not I do not say, that men who are active in the management and direction of unions are "spotted" as the phrase is, and that sooner or later some pretext is found for their discharge. It would be suitable that legislation should deal with this grievance and should provide that no preference either in original employment or in retention in his position should be given to any man because of his membership or nonmembership in a union. It might very well require, as proposed by Henry R. Torene, that employment by carriers should always be for a fixed term. I would go further, I would provide that no man should be summarily discharged. If any complaint is made by a superior, it should be referred to a committee, which can hear summarily the complaint and the explanation to be given, and approve or disapprove the penalty which the superior claims should be inflicted.

Such a system as this has been found successful in many great public offices and in many great private establishments. It exists in the municipal service of the city of Chicago. It exists in the office of the borough president of what was formerly the city of New York and is now the Borough of Manhattan, which in itself includes 2,300 employees. It exists in the great works under the general management of Edison, at Orange, N. J., with 7,000 employees, and in the department store of Filene in Boston. Doubtless investigation would show that it exists in other places. Its operation is satisfactory. It keeps up the tone of the service; protects the men from arbitrary action and from the fear of it, which is perhaps quite as serious as the action itself. In New York City, the borough president has found it desirable to have this committee composed in part of employees. He has had many hearings during his term of office, and informs me that in every case the decision has been unanimous. I am persuaded that we can trust the men who are in the service of the public in connection with our great public utilities corporations, and that if we do trust them, they will deal fairly with the public and with one another. But if the public is to trust them, they, in turn, should be willing to trust the public. The old saying was that protection and allegiance are reciprocal. Confidence certainly is reciprocal.

One other argument against this proposed legislation remains to be considered. It is alleged, sometimes by one side and sometimes by the other, that it would violate the liberty of contract that it claimed to be absolute. To this I reply, that there is no such thing as absolute liberty of contract in reference to public utilities. The Supreme Court, as long ago as 1848 (*N. J. Steam Nav. Co. v. Merchants Bank*, 6 Howard, 344), held that a clause in a bill of lading exempting a carrier from liability for the negligence of its servants was against public policy and void. In the elevator cases it was decided that the legislature might regulate the rates for charges in elevators, because they were public utilities. The Interstate Commerce Commission is constantly regulating the rates charged by carriers for the transportation of passengers and freight. All this is done under the authority of Article I, section 8, of the Constitution of the United States—the power "to regulate commerce with foreign nations and among the several States." (*Gibbons v. Ogden*, 9 Wheat., 1.) And the

passenger tax cases (7 Howard, 283) settled the law that this power is plenary, subject only to specific limitations in the Constitution. Congress could not directly, nor could it indirectly, by means of a commission raise wages so high or fix rates so low as to deprive investors of a fair return upon their capital. Private property can not "be taken for public use without just compensation." Subject to this and similar limitations in our constitutional Bill of Rights, I repeat, the power to regulate commerce is plenary. (*McCullough v. Maryland*, 4 Wheat., 316, 342.)

Congress, then, has full power in the premises and can do justice to all—the public, the railroads, the engineers and conductors. The President and the people call upon you to exercise this power and enforce industrial peace.

It will be to the eternal honor of this present Congress if it should establish a system which will in the future prevent powerful corporations or powerful brotherhoods from taking the law into their own hands, and will bring both sides under the jurisdiction of a competent and impartial industrial court which shall determine peaceably all questions in difference between them. Let it not be said that it is impossible to find impartial judges. They have been found in the past. We shall find them, if we try, in the future.

Let me say in conclusion that stockholders, officers of railroads, and men in their employ, are first of all citizens of the United States. Be loyal to this great country, of which you are a part, and cooperate now in a friendly spirit to remove all occasion for dispute in the future, and to provide means by which, if disputes should arise, they can be settled amicably and without resort to industrial war. Let me especially urge both sides to avoid all expressions that would indicate refusal to submit to the laws of the country in which we live. I have seen statements in newspapers purporting to come from men high in authority, that they and their associates would refuse to submit to the decisions of the courts. Let me remind them that obedience to law is an essential element in American democracy, and that from the very foundation of the Government we have chosen to leave it to the courts to say what the law is. If the law as expounded by them is not satisfactory to the people, there is a proper and legal way to change it. Refusal to submit means revolution and war, and what American citizen, in his right mind, would seriously argue in favor of a resort to this final remedy? We are a free country. We are a prosperous country; prosperous beyond example. Our prosperity has come from the security that our institutions give to every citizen, that if he does his duty the State will protect him in the exercise of all his rights. All honor to the President, that he is now urging this subject upon the attention of the Senators and Representatives of the United States. The people are with him and from their decision there is no appeal.

Mr. WHEELER. I was in Chicago in August last as a member of the American Bar Association. I did not meet a member there who did not realize the great difficulty of the situation. There were many of us who would have been, had a strike taken place, marooned there, absolutely debarred from all access to our business and our homes. I was in a hotel on the lake front. You know the railroads run along the lake front, and trains were running all night bringing supplies of food to that city, which was then threatened with a blockade just as complete as if an enemy's forces were in southern Illinois and marching north.

We felt that it was a serious situation. We agreed with every word that the President said, that it must never be allowed to occur again, and I feel here not only that the committee but that those representatives of these great organizations who are here and those who are absent—the absent witnesses are sometimes the most important—that it is essential that we should all come together on this proposition that the railroad service is the public service. Nobody is obliged to go into it, nobody is obliged to become a railroad manager or an engineer or a conductor, but every man who voluntarily goes into it ought to feel that he is a servant of the public and that he owes a duty to the public.

I know my friend Mr. Gompers has said that every citizen has an inalienable right to work when he pleases and for whom he pleases and to quit work when he likes. I would not assent to that in point

of morals even, but I dissent from it entirely in the case of a man who has entered into the public service.

A physician would have no right when he commences an operation to leave his patient on the operating table and quit. It would be manslaughter if the man died in consequence. And that is, I think, a consideration that has been overlooked by our friends, whom we respect. I have seen their testimony; I have tried to get in touch with the representatives of these great brotherhoods and I respect their ability and their devotion to duty as individuals, nobody can respect it more highly than I do, and I am very glad they are well paid, apparently, from the figures, as well paid as any persons engaged in skilled occupations of the character that is involved in running and firing an engine or acting as a conductor of a train.

If I am right in this fundamental proposition, and it is on that ground that Congress has legislated for the railroads, has regulated their rates of fare and the conditions under which they should be operated—if that is true for the one side it must be equally true for the other.

So we come to this, that inasmuch as differences do arise and have arisen there should be some tribunal that should have power to decide between the two parties.

The question was asked by a Senator, Was there not a long discussion prior to August last? Certainly there was. But there was, under existing legislation, no power to require the parties to that discussion to appear before an impartial tribunal. Judge Chambers requested that his services might be used, and he asked them to go before the tribunal created by the Newlands Act of 1913. That they refused to do. Why should there not be a tribunal created by the Government, with all the authority that any court can have, to cite the parties to the controversy before it, to hear their statements publicly, get at the merits on both sides and then decide?

One of the objections that I have seen urged to such a court—an "industrial court" they call it in Massachusetts, and I think it is a very good name—is this: It is said that the award of such a tribunal would be enforced by only one party to the controversy. That statement was made at a debate we had in New York last month. That shows a misapprehension of the Newlands Act. The Newlands Act provides that if there is any difference in regard to the interpretation of the award the board can be reconvened; it provides the award is to be filed in the district court, and after a lapse of 10 days it becomes a judgment of that court. If it is a judgment of the court, the court can enforce it. If it is an award against the railroads and the railroad officials take a different view from what the employees do, it is perfectly competent then to apply to the court and require it to be enforced. If there is a question of its meaning the industrial court, the board of arbitration, if you please, can be reconvened and give a decision that under that act is just as binding as the original award. So is it not true that even under present legislation that objection fails?

I want to call your attention to the fact that Mr. Stone, chief of the Brotherhood of Locomotive Engineers, said to this very committee when the Newlands Act was under consideration, "There is not any question about the power of these organizations, the brotherhoods, and there is not any question that they believe in the justice and

equity of their position. And if this plan we propose here is something which both parties can get together on and have industrial peace, then it seems to me that in all fairness for the great class of men we are trying to represent, the 400,000 members of the brotherhoods—you men," which I suppose referred to the committee, "are looking after the interests of these 28,000,000 men who are served by the railroads in this eastern territory—that this bill should be passed. When you are arbitrating under the law you have a moral effect you do not get in any other way."

That argument was persuasive, the bill was passed, and yet three years afterwards we find an unfortunate change of heart. Then it was said last August that the principle of the eight-hour law could not be arbitrated. But then when the Adamson law, as we call it, was enacted, we found that really we did not get an eight-hour law in its strict sense. There is nothing in that law to prevent a man working more than eight hours; there is nothing in that law to give him a higher rate after the eight hours than before; it is not like the statute, more wise and salutary, which prohibits the working for more than 16 hours except in great emergency. We have a similar law in the State of New York, and I presume almost all the States have it, because it is recognized that it is dangerous to the public and bad for the men to be under this strain for so long a period of time.

Let me say there for a moment that while 16 hours seems a great while, that in practical application that only applies to men who are engaged, for example, on a freight train which is laid off on a siding. It is not continuous. I do not suppose anybody could stand 16 hours' strain continuously operating a locomotive engine. But in practice what happens to the engineers of express trains, as we have had demonstrated in the bills filed in reference to the Adamson law is this: For example, between New Haven and Boston there is a run of five hours. That is a day's work. Very often, however, the engineer chooses to come back. He lives in New Haven and goes back in the afternoon, and then he is paid for another day's work. He gets two days' pay for one, then he lays off the next day. So it is all worked out under these complicated schedules, which you gentlemen of the committee have probably seen, as they have been annexed to the various bills filed by the railroad companies; it shows how in practice these things are worked out better than on paper would seem to be the case. But is it not clear that a railroad can not be operated on the eight-hour principle? You could not say, in the case of an engineer, that his eight hours were up and that he should stop right where he is in the midst of the run, for that would stop the whole railroad. The railroad is circulation. Running one train is nothing; it is the running of 1,000 trains, and they are consecutive. You can not have a thousand tracks, you have only your double-track and you have to keep it open, and therefore again I urge that all these details, which are multifarious, are matters for careful, deliberate consideration by an industrial court.

We heard it stated by men high in authority that it was impossible to get an impartial tribunal. I want to say one word about that. In the first place, is it not true that we have had impartial tribunals? I look through the monthly review of the Bureau of Labor Statistics; I look through the reports of Judge Chambers, of which I have one here, and I find that in these arbitrations under the Newlands Act

and under the previous act labor makes its own appointments. Can it be said that their representatives are not fair and impartial? What I find still further is that in almost all cases these awards have been unanimous. I admit, since the point has been made, that where the railroads appoint two men they are apt to be friendly to the railroads. Where the organizations appoint two men they are apt to be friendly to the organizations. It is therefore really the two that are appointed by the Government that are the impartial men, and that is equally true in international arbitration. As we all know, in the great Alaskan boundary case it was really Lord Alverson who decided it. The Canadian arbitrators were all on the Canadian side; the Americans were all on our side. It was Lord Alverson who turned the scale; it was an arbitration by one man, really. That is why I do think if we could start with a clean slate it would be better to have the entire appointment of this board by the Government, but we have to look at the past. The tradition is to have arbitrators appointed from each side. I do not suppose that our friends of the railroad brotherhoods would desire to have that changed, and, of course, if they have two representatives on the board it is only just that the railroads should have two. But I submit for your consideration, gentlemen of the committee, and for theirs as well as for the railroads, whom my friend Senator Faulkner represents, that it would be well worth considering whether we had not better give up this idea of having two men on a side, with two umpires, and have them all appointed as the great board was appointed by President Roosevelt at the time of the coal strike. No one can say that was not an impartial board. Carroll D. Wright was upon it. There was another representative of labor upon it, though not appointed by the organizations; selected by the President from among the best men we have, and Judge Gray presided. Nobody ever found any fault with the impartiality of that board, which was entirely appointed by the Government, and its award was lasting. It was made for three years and that has since been renewed. It provided for the appointment of a committee that should sit meanwhile and superintend the execution of the award.

The objection I referred to a little while ago is, on principle, sound. It is equally important to have the execution of the award supervised as it is to have the award itself. Provision certainly should be made for that, and if you are creating an industrial court it may be well to provide for that distinction. As the law is at present, as I say, it is left to the district court of the United States to decide whether the award is fairly performed or not. It is as impartial a court as can be, and until we get something better let us stand on that.

I want to draw attention a little more in detail to some of these legal points that have been presented. At first an elementary proposition is always put forward that there is a right to strike.

As the chairman says, and I hope we shall all remember that, there is nothing in the recommendation of the President or in any bill that is offered which deprives any individual of the right to quit work. It is the combination to obstruct the business and commerce of the country that is aimed at.

My friend, Mr. Parkinson, whom I think some of you know who has assisted sometimes in drafting bills and is certainly a competent draftsman, puts that very well in a paper of his w

has just been published. He says the object of a strike is not to bring about the termination of the employment of the strikers but it is to continue their employment on better terms. They do not want to lose their place; they object strenuously that anybody else should take it. In strikes there is sometimes force and sometimes picketing—"peaceable persuasion," as it is called. This often becomes something more than persuasion. In every strike there is a vigorous endeavor to keep other people from getting that job in order that the strikers may be reinstated. That being the case, how can you say—there being no proposition to prevent an individual from dropping his job and going to some other more congenial occupation—how can you say it is compulsory servitude to prevent a combination to obstruct traffic? It all turns upon the meaning of that clause in the amendment to the Constitution as to involuntary servitude.

We have had some light from the courts on that subject in *Robertson v. Baldwin* (161 U. S., 281)—the seamen's case—that my friend, Mr. Furuseeth, is familiar with, and which he thought unfortunate. The courts take this very ground. The question arose there as to whether or not the amendment to the Constitution did not in effect make it unlawful to enforce the law against desertion. The court held it did not. They held that in *Robinson v. Baldwin*. They said, "How can you say that a service that is voluntarily entered into is involuntary?" They pointed out that for the purposes of foreign commerce it was of vital consequence that when a ship had begun her voyage she should finish it. She makes contracts with passengers; she makes contracts with shippers; they rely upon the performance of those contracts, and they can not be performed without the sailors, and if the sailors ship for the voyage, the courts say it is lawful to make them perform their contracts.

Now it is on that line, as I understand, that my friend, Mr. Henry Towne, of the New York Merchants Association, has recommended the requirement that is referred to by the Senator; that is to say, that men engaging in the service of carriers shall engage for a fixed term. You will remember that in the partial railway strike of the street railways in New York City last summer, the elevated and underground railroads made contracts in which their men voluntarily joined to be employed for two years.

There is a great deal to be said in favor of that proposition. Seamen are generally engaged for a voyage, and they sometimes engage for a term of years, but in either case it is not indefinite. There is an engagement in the shipping articles for some specified period. Why not apply that same principle, that has worked so well in foreign and domestic commerce—why is it not equally desirable for these men? It protects them from arbitrary discharge. If a man is engaged for two years, the company is engaged for two years. I must say that I think the suggestion of Mr. Towne deserves serious consideration. But whether it is for a day or a trip or a year, whatever the term may be, there is nothing involuntary about it if a man voluntarily and intelligently goes into it. That, too, is what the Supreme Court of the United States held in the *Debs* case (158 v. 5, 564). They held that the necessities of interstate commerce were just as great, and that the principles applicable to carriers by rail were just the same—as we lawyers all know they are—as those

applicable to traffic by sea, and there the instrumentality by which the remedy was worked out was by means of an injunction.

A good deal was said at that time about "Government by injunction," but let me remind the committee that an injunction is process of law. I submit it is just as important as the habeas corpus. What is the function of an injunction? Why, it is to keep things as they are until the courts decided them upon their merits. It is to keep things as they are by preventing the parties from taking the law into their own hands. That is what an injunction is; that is all it is. But it is that, and that was the process that was worked out in the Debs case. A bill was filed by Attorney General Olney, under the direction of Mr. Cleveland, alleging that Mr. Debs and his associates were combining to obstruct transportation of the country and to obstruct the interstate commerce of the country, and the court enjoined them from doing that. Mr. Debs was advised by his counsel that the injunction was illegal and he disobeyed it. He was arrested and put in prison. His testimony before the commission of inquiry was that the arrest of himself and his associates broke up the strike. It is very interesting, that testimony of Mr. Debs before that commission, and I commend it to the attention of the committee. He says that it was not the troops that broke up that strike; it was not the police that broke it up; it was the action of the United States courts. He says, "A strike is war. Not necessarily a war of blood and bullets, but a war in the sense that it is a conflict between two contending interests or classes of interests. There is more or less strategy in war, and this (Chicago) was the center of our operations. Orders were issued from here, questions were answered, and our men were kept in line from here."

That strike extended through 27 States.

I have often been asked the question: "How can you enforce such a law as this?" I have heard it brought forward as an argument that the penalties in Canada—for they are penalties in that law—have never been enforced by criminal proceedings. Having had a good deal of experience in legal practice, I am impressed with the fact that civil remedies are far more satisfactory, when you can avail of them, than criminal remedies. This remedy of injunction—which many seem to think obnoxious—is to my mind one of the most important to all proceedings in court.

There is not sufficient time to go into details with regard to that. It was all worked out in the Debs case, however, and the records are there for inspection. But the fundamental rule in injunction proceedings is that the case is decided on the merits. You do not have any technical points because there is no technical procedure. You are heard; you put in your affidavits; sometimes witnesses are called, and a referee or master is appointed, but whichever way you get the facts before the court, you get them, and the court of first instance decides, and then the whole record goes up and is heard on appeal. It is not a question of whether there was reversible error in the charge of a judge or in exception to the evidence, but the whole case is there and it is heard and heard promptly and upon the merits.

That procedure has every advantage, and if it should ever become necessary to enforce the provisions of such an act as this which is now before you, that would be the way to do it. I hope it never will become necessary. Let me remind you of this: The procedure under



an industrial court which is created by law, which has authority to summons parties before it, is very different from a mere arbitration tribunal which is only entered into by the choice of the parties. I will say for our friends of the brotherhoods that I believe that in their hearts they have respect for the law. I have seen some statements by men high in authority among them that they would not respect the decisions of the courts; that if an injunction were granted against them they would disobey it, but I think those were hasty utterances. I have known some men active in railways, engineers and conductors, and as I meet them in my travels they seem to be men of character. Many of them are men of some property; they have their little homes and their families, and to them the supremacy of the law is just as important as it is to the richest of men. What a man says, what he puts in the savings bank, what he wants to provide for his children and send his girl, perhaps, to the high school or what not—perhaps he wants her to be a teacher—whatever his ambition is he saves for it. If he is an honest, steady man he wants his savings to be protected.

In these discussions last August and September there were whole pages of newspapers alternately taken up by brotherhoods and railroads, each putting its case before the people. There was never a case better presented, as I saw it, to the American people than that was. One of the arguments used strongly by the brotherhoods was this—and I want to call your attention to it because I think it is most important in this matter—that we should get rid of any prejudice in regard to it. It was said that the railroad stockholders were not the public; then it was said that some of the railroads owned stock in other companies. It was said that the Pennsylvania Railroad owned stock in 72 other companies.

I have not examined to know whether that is accurate or not, but what I do know is this, that there are at least 300,000 separate individual stockholders in American railroads, and that any man or woman who has put a few hard-earned dollars into the stock of the Pennsylvania Railroad is interested in all this stock that is held by the Pennsylvania Railroad. No, that is an appeal to prejudice and ought to be disregarded.

Then there is another grievance that has been brought forward in the course of these discussions, the men are afraid of arbitrary dismissal. They say some of the chiefs of divisions in the railroads are all right, and then there are others who are arbitrary, and if a man belongs to a union and is active in it, he gets spotted and some excuse is found for his dismissal.

That is a grievance—the reality is a grievance, but I am inclined to think the apprehension or fear of that dismissal is quite as serious.

When you deal with that, I would provide—whether you put it in the bill or whether it is part of the award that the industrial court can make, for we must give them ample power—I would provide that no dismissal should be summary, but that any man, before his dismissal takes effect, should have a hearing before a committee. Provide for the appointment of a committee and provide—let it be provided in the award that dismissal should be subject to the authority of this committee. That is the system my friend, Mr. Marcus M. Marks, who is borough president of what formerly was the whole city of New York but now is only the Borough of Manhattan, has intro-

duced into his administration. He has 2,300 employees, and no man can be dismissed by anybody from his service unless he has a hearing before a committee composed of one of the employees, one of the subordinates in the office, and the case is there summarily heard. It is not heard like a hearing in court; there is no court review, but there is a hearing, and there is no dismissal until that board recommends it. Mr. Marks told me there had been 90 hearings during the two years he has been president and in every case the award has been unanimous; they had all agreed. The men, when the matter of arbitration is put up to them, rise to the situation. They do not say, "This man is our fellow worker and we will stand up for him," but when you put them in a position of trust they will be equal to the trust. While I have this feeling for them I want them to have the same feeling for us.

Mr. Chairman and Senators, if you can pass a broad-gauge bill that will give the tribunal the power to secure all the evidence and will prohibit a strike till after the decision, you will give the country a law that will be memorable in history. It will be what Mr. King said of the Canadian act, most valuable and most important for the great cause of industrial peace.

The CHAIRMAN. Mr. Wheeler, I think we will have to conclude your hearing at this point. The committee will be very glad to hear you further to-morrow. We are sorry to be compelled to ask you to suspend at this point. I suggest that we hold an executive session.

Senator UNDERWOOD. I move that we go into executive session now.

Senator BRANDEGEE. I want to say a word to Mr. Wheeler. He has made a very interesting discussion, and there are a few questions that I would like to ask him.

The CHAIRMAN. Could you remain in the city until to-morrow?

Mr. WHEELER. I will do so, Mr. Chairman, and will be glad to attend the committee at its convenience. Shall I be here to-morrow morning at 10 o'clock?

The CHAIRMAN. Yes; if you please.

Mr. WHEELER. I am very much indebted to the committee for hearing me.

The CHAIRMAN. If there is no objection we will now go into executive session.

(Accordingly at 12 o'clock m. the committee went into executive session, and after such session adjourned until Wednesday, January 3, 1917, at 10 o'clock a. m.)



# GOVERNMENT INVESTIGATION OF RAILWAY DISPUTES.

WEDNESDAY, JANUARY 3, 1917.

UNITED STATES SENATE,  
COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The committee met at 10 o'clock a. m. at room 326, Senate Office Building, Hon. Francis G. Newlands (chairman) presiding.

## STATEMENT OF MR. EVERETT P. WHEELER—Resumed.

Mr. WHEELER. Mr. Chairman and Senators, since the meeting yesterday, and with reference to some of the questions that were put as to the proceedings under the Newlands Act, and in Canada also, I have looked up the report. I find in the report of the Commission of Mediation for the year ending June 30, 1914, there were 28 cases of mediation under the Newlands Act and a great many railroads concerned in them. The enumeration of them covers five pages of fine print. There were seven cases of arbitration, and I judge from the report that the result of the proceedings, whether of mediation or of arbitration, has been very satisfactory. I looked at the monthly review of the United States Bureau of Labor Statistics for the last month, December, and I find it stated (p. 16), in reference to the working of the Canadian act, that in September last the Canadian Federation of Labor passed a vote approving the act and asking that it be extended to other utilities besides those that were originally included in it. They also ask—let me read their words:

That the enforcement of awards under it be made compulsory.

Now, it is also true that in the same report it is noted that another congress in Canada had asked for the repeal of the act.

Senator BRANDEGEE. A labor congress?

Mr. WHEELER. Yes, sir; trades and labor congress of Canada. That was also held in September.

So we find the two labor organizations there at variance on that subject. But I am informed from Ottawa that the Canadian Government has under consideration and has already drafted an amendment to the Canadian act which is substantially in accord with this recommendation of the Canadian Federation of Labor. So that it is clear, not only from that, but from what we learn from Mr. King, who was formerly minister of labor, that the general working of the act has been satisfactory to the Canadian public.

I find also from the report (p. 17) that during the nine years that the Canadian act has been in force there have been 212 applications

for what is termed under that act a board of conciliation and investigation, and that in 182 of those cases those applications have been granted. The others were settled without the appointment of a board. Out of the 182 cases where there have been hearings there were only 2 where a strike was not averted or ended. The same report says (p. 15) that in the United States 321 strikes were reported during the month of October, 1916.

So I think, if we may judge from the actual experience of our northern neighbor, the working of that act has been very successful in settling controversies and averting strikes.

In conclusion let me say a few words on the position of the proposed legislation under the Constitution of the United States. I have read carefully the committee print, and it seems to me that under the authorities there is ample constitutional power in Congress to do what is here proposed. We start with the power to regulate commerce with foreign States and among the several States, which is in the first article of the Constitution, section 8, and we have the great leading cases, with which the committee is familiar, and which I need only mention—*Gibbons v. Ogden* (9 Wheat., 1) and the *Passenger Tax Cases* (7 How., 283, 412)—which distinctly held that this power is plenary in Congress, and extends to transportation of passengers as well as of freight, which, as you know, was originally doubted.

Then we have as a great fundamental rule of construction the doctrine in *McCulloch v. Maryland* (4 Wheat., 316), upon which our whole Federal banking system is now built. I may be pardoned for saying that there is perhaps no more remarkable instance of a decision of a court becoming embodied in the whole condition of the Nation than this. We all know it was opposed at the time; that President Jackson refused to follow it, and vetoed a bill for recharter of the bank; and yet the necessities in the growth of the United States have been such as to make the national banking system vital to our commercial life. The last Congresses adopted this Federal banking reserve system, which is an extension of the national banking system of the Civil War, and we find ourselves really now living and acting in every town under the authority of *McCulloch v. Maryland*.

In a recent case that went up from Oklahoma, the case of the *Noble State Bank v. Haskell* (219 U. S., 104), the rule of construction in the *McCulloch* case is repeated. That involved the validity of a law requiring each bank to contribute to a guaranty fund. Some of the banks objected to that. They said there was no power to compel a bank to contribute to a guaranty fund covering the deposits of other banks, but the Supreme Court held that there was. It laid down the broad rule that where the power is granted everything reasonably incidental to that power is within the discretion and judgment of Congress.

The only limit to that, as they say, is where there is an express prohibition. You can not, for example, take private property without compensation, and for that reason Congress would have no power to put up wages so high that it would be confiscatory, nor would they have the power to lower rates to such a degree that there would be no return for the capital invested. The only other constitutional restriction is that which I discussed yesterday, that

of involuntary servitude, under the amendment. I referred yesterday to the case of *Robertson v. Baldwin* (165 U. S., 281). I will not repeat that here. In the case which, I notice, was referred to by the Senator from Iowa in his speech in the Senate last August, *Patterson v. The Bark Eudora* (190 U. S., —), *Robertson v. Baldwin* is approved distinctly. So we have that as the final utterance of the Supreme Court in reference to the construction of this clause in the amendment to the Constitution.

Senator UNDERWOOD. Will you allow me to ask you a question right there?

Mr. WHEELER. Certainly.

Senator UNDERWOOD. In the peonage cases they have held that involuntary servitude may be only restraint for an hour. It is not the length of the servitude, it is not indefinite involuntary servitude; but in the peonage cases, which grew out of the same conditions, men have been sent to the penitentiary in recent years for restraining a man for a day. Now, why do you draw the distinction between a law that will say that a man must work pending the decision of a tribunal—maybe a month or a week, but pending the decision of somebody else—or saying that he must work indefinitely, according to the finding of the tribunal? Where do you get the authority to draw that distinction?

Mr. WHEELER. This is the distinction: In the peonage cases the court held that the effect of the legislation, coupled with the presumptions that were incorporated in the act that they found unconstitutional, was to make a man a peon. If he once entered into a service it bound him just as fast as he had been bound under the institution of slavery. They held that it was manifestly an evasion of the prohibition against servitude, and on that ground they held that the statute referred to was unconstitutional.

Senator UNDERWOOD. I remember one case from Florida—I can not recall the name of it—where they sent a man to the penitentiary for peonage because he held a man he had imported, paid his way, and put him down in Florida to work. He made him stay there and work, with the intention of making him work out his railroad fare coming down; he held him there for that purpose, not for indefinite labor; but his purpose was to hold him there until the man earned enough to pay back the railroad fare. They held that that was peonage and sent the man to the penitentiary for it. Now, that was not involuntary servitude without any length of term. That had a distinct time for the completion of the service. Now, I do not see where you draw the distinction between saying to a man that he must work for 30 days or work for 60 days awaiting the finding of a tribunal as a preliminary proposition if he must work indefinitely at a fixed rate after the finding of that tribunal.

Mr. WHEELER. Well, when you take the decision of a court you must look at the ground given by it, and the ground given in those peonage cases was that the effect of the legislation, taken altogether, was to make a man a prisoner for debt; that he was led on to get an advance of pay either in the form of his railroad fare, as in the Florida case, or in the form of first month's wages, or whatever it was, and then he was compelled to work it out. Now, they say you can not compel a man under the Constitution to work out a debt. But in the *Robertson* case and in the *Patterson* case they say that if

a man has voluntarily entered upon a service and that service is in the public interest, he can be compelled to perform his contract. That is really the only ground upon which, I think, the two lines of cases can be distinguished. In the one case there was no public service, it was a private contract with a private employer; but in the other cases, that of the bark *Eudora* and the Robertson case, it was foreign commerce. In these cases the courts say that those who enter the service of the public in public employment connected with foreign commerce can be obliged by statute to complete their service.

We need not shrink from that. It is analogous to service in the Army. It is not the same thing, but there is a very strong analogy. It is on that ground that it was held that private property could be taken by a railroad against the will of the owner—because it was for public use. That was about 80 years ago. That was the beginning of the doctrine in this country that common carriers are a part of the public service, and, being so, are subject to public regulation. That is the fundamental distinction.

I would not argue that this proposed law could be applied to merely private service.

Senator UNDERWOOD. But it is private service up to this time. I can see that the Government might own these railroads and then pass a law requiring men to enlist for carrying on the service, just the same as in time of war—that is, if the Government owned the railroads and the Government had taken them over for military purposes. But the railroad companies are private corporations. A railroad company is as much a private corporation as is a corporation formed to conduct the business of a grocery store. There is this distinction, that it is true that in the case of the railroad corporation it has been given the right of eminent domain. You might go a long way toward coercing men to labor if you did not have the thirteenth amendment to the Constitution of the United States staring you in the face; but that is a direct prohibition against this proposition. If the thirteenth amendment had not been adopted there would probably be no peonage law. But you have this amendment, which has grown out of the condition of absolute slavery.

Mr. WHEELER. Still the law means what the court that we have entrusted with the power finds it to mean. If the courts say that the law has no application to public or quasi-public services which is entered into voluntarily, we must take that as a true construction of the Constitution. You could not pass a law authorizing the proprietor of a grocery to condemn land for the purpose of his grocery. That is the fundamental distinction.

Of course, railways are private corporations. But the State has thought good to incorporate them for public service and to use these instrumentalities. They are a quasi part of the Government. How can we sustain all this mass of legislation creating the Interstate Commerce Commission, regulating the rates of railroads, and taking from them the freedom of contract with shippers? This freedom of contract is practically abolished. We all know that in the old days the railroads could grant rebates and make any contract they liked with the shippers. This was an abuse because it discriminated against other shippers. The law-making power prohibits that and creates a commission to regulate rates; and already to a great extent the railroads and their employees are within the direction of Congress. And

Congress has legislated in many ways for the convenience of employees and for their safety—safety appliances, hours of labor, and many other things have been dealt with. This is logically a part of the same system. You can not dis sever them. If Congress can fix the hours of labor, if Congress can fix the character of cars, if Congress can fix the rates which are to be charged for the transportation of commodities and passengers, it can, directly or indirectly, fix employees' wages and declare what is a reasonable compensation to be paid by the railways. Subject to the limitation that it is not confiscatory, you can do all that; and it seems to me that the legislation now before you is a step in the right direction.

The CHAIRMAN. Do you find anything in this proposed law that prevents any man from giving up his employment on a railroad?

Mr. WHEELER. No; there is nothing that does that.

The CHAIRMAN. Don't you understand that this is simply a law to prevent a combination among men absolutely to arrest interstate transportation? Isn't that it?

Mr. WHEELER. That is it exactly.

The CHAIRMAN. In interstate transportation?

Mr. WHEELER. Yes. I was just coming to that. I thank the chairman heartily for developing it so clearly.

The language of the last clause, in the eighth section of the Newlands Act, is that "nothing in this act shall be construed to require an employee to render personal service without his consent, and no injunction or other legal process shall be issued which shall compel the performance by any employee against his will of a contract for personal labor or service."

That is the other ground on which, in all the strike cases, the courts have drawn a distinction. The most numerous body of strike decisions grew out of the great railroad strike of 1894. The Debs case was one of them. But in the Phelan case, to which my attention was drawn yesterday by the Senator from Connecticut, in Sixty-second Federal Reporter, page 803, and in which Mr. Taft (afterwards President of the United States) had to deal with a disturbance arising out of this strike, Phelan was an organizer who induced men to strike, and the court had ordered that all persons refrain from interfering with interstate commerce or with the transportation of the mails. The court found that that was a lawful order of the court and that his inducing men to strike was a violation of it.

On page 821 Judge Taft summed it up. He says that if a man chose voluntarily to quit work and leave it he had a right to do so. That we do not dispute. It is not at all, as the chairman has said, the case of compelling Jones or Smith to go on with his work. It is a case of prohibiting the chiefs that have been chosen by secret orders, in the management of which the public has no voice—it is a case of prohibiting them from inducing the men to go out in a body. It does not apply to a man who wants to go out and go into some other job. It is for the purpose of preventing inconvenience to the public. It is for that purpose that they do not yield to putting these men back on terms different from those upon which they were formerly employed.



Let me read this quotation from the close of Judge Taft's opinion:

The purpose, shortly stated, was to starve the railroad companies and the public into compelling Pullman to do something which they had no lawful right to compel him to do. Certainly the starvation of a nation can not be a lawful purpose of a combination, and it is utterly immaterial whether the purpose is effected by means usually lawful or otherwise.

That is the distinction he makes. If it were merely a matter of quitting the railroad's employment and going into something else it would be legitimate.

I spoke yesterday of the engineers of express trains on the New Haven Railroad. Many of them live in New Haven. Now, if a gentleman from Oklahoma, who was interested in the prosperity and growth of that State, should go to New Haven and induce those men to quit the railroad's service and go to Oklahoma and take up land in that State he would have a right to do so. This act is not directed against that, but against a combination to stay in the service and compel the companies to concede certain terms which they are not willing to concede. It is putting force upon the companies and the public.

There we have the reason why it is important that this law should be passed creating a tribunal to deal with such cases and prohibiting a strike for a period. It is not necessary to go into the argument as to whether you could do it indefinitely.

Then, in another case—*ex parte Lennon*—which did go to the Supreme Court and which you will find in One hundred and sixty-sixth United States, 548, the same rule is laid down in reference to an individual engineer who refused to handle boycotted cars. The court found as a fact that it was evidently not his intention to quite the service of the company and go into some other service. He wanted to stay in the service of the company, but he was unwilling to do what the court had held the company was bound to do; that is to say, to move cars from connecting railroads. It was under that statute that that litigation arose.

And again, in a recent case on the subject of concerted action being illegal when the individual act would not be (*Grenada Lumber Co. v. Mississippi*, in 217 U. S., 440), the same doctrine was laid down. To the same effect is the recent decision of the Supreme Court of the State of Massachusetts in *Pickett v. Walsh* (197 Mass., 572).

If the committee will allow me to make another suggestion, in conclusion, in regard to the language of section 12, and in line with my argument of yesterday that it was desirable that any board of arbitration or inquiry should have the right to reconvene, I want to point out that this right is given in the original Newlands Act, to which I called your attention yesterday, but that in this section 12 of the proposed bill that it is provided otherwise.

The CHAIRMAN. What page?

Mr. WHEELER. Page 7, lines 3 and 4, of the tentative print. I would add to that, if I may be pardoned for making the suggestion, "but it may be reconvened on the application of either party to pass upon any controversy arising over the meaning of the application of its report and shall hear both parties and decide such controversy and report thereon as hereinbefore provided."

The CHAIRMAN. Where does that amendment come in?

Mr. WHEELER. At the end of the sentence in line 4, "Upon the submission of its report the work of the board shall terminate."

Senator ROBINSON. I suppose you have observed the provision commencing on page 5, last paragraph, that follows "In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this act, either party to the said agreement may apply to the board of mediation and conciliation for an expression of opinion from such board"—you would make that language, or something similar to that, apply to the case of questions arising in regard to the report on the inquiry, would you?

Mr. WHEELER. Yes.

Senator UNDERWOOD. Why should you put that in this bill? This bill only calls for a report. It does not pretend to be an award. There was in the old provision an award. The bill from which this was copied and where there was a provision for voluntary arbitration provided for an award. Therefore, it was necessary to carry the language into it. There is nothing, however, in this bill but a report. They are supposed to go out and find the facts and make a report. There is no award that binds anybody. Under the circumstances, why should you put this language into the bill?

Senator ROBINSON. The provision for subsequent proceedings, where an agreement has been reached, has been retained in the bill.

Senator UNDERWOOD. I know, but the purpose of this bill is merely to bring about a report.

Senator ROBINSON. That is this feature of the one section of the bill.

Senator UNDERWOOD. That is true.

Senator POMERENE. Suppose there was a palpable error in this report that could be pointed out so that the board could remedy it.

Senator UNDERWOOD. I suppose they could correct a palpable error.

Senator ROBINSON. I see no reason why this commission should reconvene just to correct an error. It is not supposed to make an error. The purpose of this language is evidently contemplating some further action of this board.

Senator POMERENE. I used an extreme case and perhaps strained a point; but it might be that there would be some findings of the board which, when brought to the board's attention, they would be perfectly willing to change their view upon, if it was presented to them.

Senator ROBINSON. There might arise a different case from that. Take the case where a railroad places one construction on their report, and the laborers put another construction upon it, and the true meaning is not clear. The board should be reconvened for the purpose of making clear their own report.

Senator BRANDEGEE. This provision provides for a meeting only where there has been an agreement between the parties.

Senator ROBINSON. Yes; and it provides for making clear the report that has been made by the board of inquiry where a dispute afterwards arises as to the meaning or construction of the report.

Senator UNDERWOOD. That proposition would only mean an indefinite construction of the question.

Senator BRANDEGEE. Now this act tends to forbid them, during the period of arbitration and conciliation and for 30 days thereafter,

from quitting their employment. If that can be done lawfully, why can not Congress say that they shall not quit their employment at all?

Mr. WHEELER. You will observe that it is not proposed that Congress shall say that they shall not quit their employment—but that they shall not combine.

Senator BRANDEGEE. It says that it shall be unlawful for the employees to declare, cause, or practice a strike. That would prevent a labor union through its leaders or through a vote of its members themselves from ordering a strike pending this investigation, which might go on for 3 months, and for 30 days thereafter. I simply ask you as a matter of policy, is that right? Supposing Congress said it shall be unlawful for a year afterwards, instead of 30 days. Do you think Congress has power to do that?

Mr. WHEELER. Candidly, I do. But I do not recommend it now.

Senator BRANDEGEE. If for a year, why not for 10 years?

Mr. WHEELER. I think they have the power to do that.

Senator BRANDEGEE. These men claim that it would be involuntary servitude for Congress to say that you can not for 10 years or forever quit your charge. Why is it not involuntary servitude for Congress to say that you shall never leave it?

Mr. WHEELER. Congress could not say that.

Senator BRANDEGEE. Congress can not say they can never leave it, but you say that Congress has the power to say they can not leave it for a year, as I understood you.

Mr. WHEELER. Taking the definition of strike, on page 4:

The term "strike," as used in this act, shall be held to mean the cessation of work by a body of employees, acting in combination in consequence of the controversy as above defined, the same being done as a means of compelling their employer or to aid other employees in compelling their employer to accept terms of employment.

That is the crux of the situation. The authorities show that it is within the power of courts or Congress to prohibit that. It is not leaving the employment. Those men can go out into another employment, can go to another railroad, or can run a stationary engine, or do whatever they like. The section does not restrain their freedom.

Senator BRANDEGEE. No; that does not restrain them in their freedom; but if it is the purpose to compel and enforce the terms which they demand, this bill prevents a strike and prevents the employees from giving up their employment.

The CHAIRMAN. Let me correct you there, Mr. Brandegee. It does not have the effect of preventing the employees from giving up their employment. Any employee can give up his employment, under the bill.

Senator BRANDEGEE. I hadn't any idea it did.

The CHAIRMAN. But it prevents employees from ceasing work as a body—in combination.

Senator BRANDEGEE. Exactly; and that is the very thing I was inquiring about the power of Congress to do. It prevents men who belong to unions from voting a strike, or leaders from ordering them to strike, pending the period of arbitration and conciliation, and for 30 days thereafter; and, as Mr. Wheeler has pointed out, a strike is defined to be the cessation of work by a body of employees acting in

combination in consequence of a controversy, and agreeing to quit their employment simultaneously for the purpose of exacting terms that they demand.

Mr. WHEELER. That is it.

Senator BRANDEGEE. Now, you say that they could be prohibited for 30 days. Then, why couldn't Congress prohibit them forever?

Mr. WHEELER. I think it is within the power of Congress to prohibit it altogether, and it is possible that, in the evolution of society, we may come to that time when the practice of strike will be a thing of the past, just as dueling is now a thing of the past and no longer practiced.

Senator POINDEXTER. There ought not to be any indefinite meaning.

Senator UNDERWOOD. If you did not have it settled definitely it might be provided that the parties could ask for a rehearing; but that would drag it out indefinitely.

Senator BRANDEGEE. Have you finished your suggestion, Mr. Wheeler?

Mr. WHEELER. There is one other suggestion I would like to make in reference to the same bill, on page 7, line 2, and I make that also, as I did the previous one, because I learn from men who are prominent in the brotherhoods that these two grievances that I am endeavoring to meet by those amendments are very serious in their minds. I do think that we ought to do everything we can in this legislation to meet the views of both sides. That is my desire. I have no other. I hope that my friends who have been listening to me here will believe that I have been actuated solely by the American desire to have justice done—justice to the carriers and to the men, and also to the public.

After the words, on page 7, line 2, "and to make report of its findings of fact, including its findings as to the cause of the controversy, together with a recommendation for a settlement according to the merits and substantial justice of the case," I would add "and for the future conduct of the relations between the parties in any of the matters mentioned in the first section." There was such a provision in the report of the commission appointed by President Roosevelt in the coal strike. It has worked out admirably, and experience has shown in other mediations and awards that such a provision regulating the future dealing and working out of the plan reported is of very great value, and that it removes occasion for friction. Mr. Chairman and Senators, while it is true, as the Senator from Alabama has stated, that this is only a report, yet I am persuaded, and I base that persuasion upon experience in other countries, that if the report is made it will be generally acquiesced in. That, Mr. Chairman and Senators, is all I desire to say.

Senator BRANDEGEE. On page 9 I want to read in the record the exact language of this proposed bill:

SEC. 13. That pending the efforts of the Board of Mediation and Conciliation to settle the controversy through mediation or conciliation or by arbitration, or, where those means have failed, pending the investigation and publication of the report of the board of inquiry, and for 30 days thereafter, it shall be unlawful for the employees to declare or cause or practice a strike, or for the employer to declare or cause or practice a lockout.

And then follow the penalties provided there.

With reference to the cases you cited, which, in your opinion, held that Congress has authority to prevent these men from making a combination to leave their employment for a year, have you any specific authority, other than what you inferred from the general language of the courts, that directly holds, as a regulation of commerce, Congress has authority to forbid them to agree among themselves to leave their employment at the same time?

Mr. WHEELER. I think the cases already cited and discussed show that.

We all know from the history of our country that dueling was a common practice in many of our States. I can remember when dueling was common in some of the States. But the laws prohibit it, and it is out of date. I do not expect to live long enough to see the time, but I do hope the time will come when strikes will also be prohibited, just as dueling is now prohibited. Dueling was a sort of private war; so is the strike—Debs himself says so.

Senator BRANDEGEE. In regard to the general question we have just been discussing, under the power to regulate commerce among the several States, has Congress the power to prevent employees from leaving their employment during the period of arbitration and conciliation and also for an indefinite period thereafter? If, furthermore, Congress has the power to prohibit that for a period of 30 days thereafter, why has it not the power to prohibit it indefinitely, forever? It seems to me you have confused the two propositions. I may be wrong about it. I do not say I am right, but you say that when men enter a public service of this kind they may be prohibited from leaving that service; then, on the other hand, you think Congress ought to prohibit them in that connection as a regulation of interstate commerce. Which of those theories do you think should apply?

Mr. WHEELER. Those are harmonious. They are like twins. For example, my ability to go into a train in Jersey City and come right through on a railroad to this city, or vice versa, is a matter which Congress has authorized under the power to regulate interstate commerce granted by the Constitution of the United States. If I have a parcel which I wish to send, I have the ability to send it over the same route or over any other interstate route. What is important in my case is also vastly more important in the case of these gentlemen who were here yesterday. They were men who feed and clothe the Nation, and they are vitally interested in the facilities of transportation from State to State. Congress has passed a great many laws to facilitate that. The first was legislation to allow connecting lines. When first I came to Washington there was no through line. You had either to cross a ferry at Camden or else be drawn by a horse car through the city of Philadelphia to get on the train for Washington. There was also a similar situation at Erie, Pa. There was no through line there. There was a riot there when the railroads undertook to inaugurate a through service, because this was an attempt to run through their city, where a large number of persons did a profitable business in transferring, and they did not want to give up that business.

The point is that interstate commerce must be facilitated, and Congress has the power to facilitate it. Anything that is necessary to bring about that result is, as I have shown by the authorities I read, within the power of this legislative body. There is the case of *McCulloch v. Maryland* (4 Wheat., 316, 421), in which it was held—

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional.

Senator BRANDEGEE. I agree with you in that, but I am also not sure that while we have plenary power to regulate commerce among the States we have plenary power to say to labor unions that they shall not strike for a given time.

Mr. WHEELER. Oh, they are a part of commerce. These gentlemen here are just as much a part of commerce as a railroad president.

Senator BRANDEGEE. They are not a commodity.

Mr. WHEELER. They are not a commodity, no; neither are the railroad managers a commodity; but they are an essential part of the transportation system which transports commodities and deserve to be treated with the greatest consideration. I am not advocating anything burdensome to them, but would have them treated with absolute justice, and believe in having a tribunal to do that justice.

The CHAIRMAN. In other words, you propose to have resort to reason instead of force in the settlement of all domestic disputes, just as we are now contending should be accomplished in international affairs?

Mr. WHEELER. Precisely.

Senator BRANDEGEE. You claim also; I suppose, that this prohibition against a strike as defined in this bill is not a violation of the constitutional provision which prevents involuntary servitude?

Mr. WHEELER. I do. It does not prevent any individual from leaving the service. It is expressly so reserved in the bill. I do not know that it is any part of the duty of a witness to speak of legislation, but I may be pardoned, as an old lawyer, if I say that I think the bill makes this very clear.

Senator BRANDEGEE. If you could have your way, you would go further than the bill, would you not?

Mr. WHEELER. I would not now. I do not think it is wise to hurry things too much. It is a matter of progress.

Senator BRANDEGEE. Your remarks yesterday led me to infer that the industrial board should have more power.

Mr. WHEELER. Once they get into the business of arbitration under the Newlands Act they should have the power to make the rules necessary to enforce the act. What I have suggested is only a step further.

The CHAIRMAN. If there are no further questions of Mr. Wheeler, we will hear from Mr. Chambers.

Mr. COWLES. May I make a remark before you proceed, Mr. Chairman.

The CHAIRMAN. Certainly.

Mr. COWLES. I want to say that when I submit my statement in behalf of the bill it will be in regard to the bill to authorize the

President of the United States in certain emergencies to take possession of railroads, telephone, and telegraph lines, and for other purposes. I shall represent two or three or four million voters at the least. I think there are some of those voters who will desire to be heard on the proposition, and some of them may desire to be heard to-morrow, if it is possible.

The CHAIRMAN. Very well.

Senator BRANDEGEE. Mr. Wheeler, just one more question before Mr. Chambers proceeds. Senator Underwood has a bill here substantially clothing the Interstate Commerce Commission with authority to determine these controverted questions between the railroads and their employes, as to hours of labor and also as to labor. Congress has authority to fix the wages, you think?

Mr. WHEELER. I have no doubt about that. I can not see any distinction between fixing rates on the one side and fixing wages on the other. It was an old admiralty rule that freight is the mother of wages. It is just as true of interstate commerce.

Senator BRANDEGEE. Do you prefer this bill to the Underwood proposition to clothe the Interstate Commerce Commission with authority to determine these questions?

Mr. WHEELER. Well, I am not prepared to say. I think that is a very interesting subject and one requiring very careful consideration. We would all agree, I am sure, that if the power is to be given the Interstate Commerce Commission their numbers would have to be increased, and they would have to be authorized to sit in divisions, because they are now crowded with work; and if you are going to give them any more work to do, you will have to make provision for handling it. They could not handle it under the present conditions.

Senator BRANDEGEE. I know that, certainly. But the point I want to make is this: What do you think, as a matter of public policy, of having such a tribunal to fix wages?

Mr. WHEELER. My impression, Mr. Chairman and Senators, is that it would be a wise thing. I have studied this subject very carefully. I know there are two sides to it, and much may be said on either side; but my impression is that it would be wise to give the same commission that fixes rates the power to fix wages. They are really inseparable. They have been separated in form, but not in substance. I would unite them under one jurisdiction. When I read that amendment last August I thought it a very wise measure. The great point of it all is to give us peace, and that bill we have been considering this morning will be a great step in that direction.

The CHAIRMAN. We realize the great inconvenience to the public, the loss and the suffering occasioned by a tie-up of transportation. If we should not stay the power of strike during this period of investigation and for a certain period after it is concluded, the maintenance of the public peace, and the maintenance of the operation of the trains against any disorderly forces that may arise, either in or outside of the labor organizations, is important.

Mr. WHEELER. Oh, very well.

The CHAIRMAN. We have on the statute books a law which makes it a misdemeanor, punishable by a fine of \$500 or by imprisonment for six months, to obstruct the mails. What is your judgment with reference to a similar provision of law regarding the willful obstruction of trains operating in interstate commerce?

Mr. WHEELER. I think the power is identical.

The CHAIRMAN. What do you think about the advisability of such action?

Mr. WHEELER. I think it would be wise to extend that existing statute to cover this case.

The CHAIRMAN. You are aware, are you not, that frequently these strikes assume proportions that are entirely outside of the organizations themselves?

Mr. WHEELER. That is one objection to them.

The CHAIRMAN. The vicious element will use these conditions as an opportunity to resort to violence—violence against the stations, violence with reference to the operation of trains, etc.

Mr. WHEELER. That is one of the greatest dangers.

The CHAIRMAN. What do you think is advisable with reference to that situation?

Mr. WHEELER. I do think it would be advisable to amend the statute you refer to, which is, I think, recorded in the brief I referred to yesterday, so as to cover the situation you suggest.

The CHAIRMAN. I will state to the committee that I have received a communication from the Chamber of Commerce of the United States, containing a form of referendum upon this question, which they have presented to their associated chambers throughout the United States, and also the message of the President of the United States to Congress upon the subject of labor legislation; also a letter from the secretary of the Chamber of Commerce of the United States of America. If there is no objection these papers will be incorporated in the record. The message of the President calling attention to the subject of labor legislation will also appear at the beginning of yesterday's proceedings.

(The papers referred to are here printed in full, as follows:)

[Dec. 16, 1916.]

#### CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA.

#### REFERENDUM NO. 19 ON THE REPORT OF THE RAILROAD COMMITTEE ON THE PREVENTION OF STRIKES AND LOCKOUTS.

National headquarters, Riggs Building, Washington, D. C.

#### BY-LAWS—ARTICLE X—SUBMISSION OF QUESTIONS.

SECTION 1. All subjects considered or acted upon by this chamber will be national in character.

SEC. 2. All propositions, resolutions, or questions, except those which involve points of order or matters of personal privilege, shall be submitted for action in writing only by the organization members, or by the council or board of directors, provided that by consent of two-thirds of the delegates present at a meeting a subject not so presented may be considered.

SEC. 3 (first consideration). An organization member desiring to present a subject for the consideration of this chamber shall commit its proposal to writing and forward it to the general secretary.

It shall be the duty of the general secretary to bring this question before the board of directors by mail or telegraph, or at its first meeting, whereupon the directors shall order the question printed with such arguments as may be presented by the proposing member, unless it be the opinion of said board that the question is not of national importance. If the board of directors decide that a question submitted by an organization member is not of national character and should not therefore be sent to the membership for consideration, the proposing member may appeal from the decision of the board to the national council at any meeting of that body, or by mail through the office of the general secretary. If the national council decides by a majority vote that the



question should be referred to the membership it shall be incumbent on the board of directors to order its submission.

In ordering the question printed the directors shall determine the length of the statement which may be submitted with it by the proposing member. The printed question and brief shall be transmitted to each member of this chamber as soon as practicable, and simultaneously the general secretary shall mail a copy to the national councillor representing each organization member.

The question shall be accompanied by a notice from the general secretary that each organization member is expected to express its opinion on the question in writing and mail said opinion to reach the national headquarters within 45 days. In returning said opinion each organization member shall also register a preliminary or test vote on the subject. It may cast one such vote for each delegate to which it is entitled in the annual meeting. No vote shall be valid unless received by the general secretary within 45 days of the date of the mailing of the question.

In forwarding the question it shall be the duty of the general secretary to advise each organization member of the date on which the right to register votes expires.

SEC. 4 (Immediate action). If before the expiration of 45 days from the date the question and brief were sent out votes representing more than two-thirds of the voting strength of the organization membership are registered in favor of the proposition, the general secretary shall immediately certify that fact to the board of directors. Thereupon, the question shall be recorded as having been approved by the chamber and it shall be the duty of the board of directors to take such steps as may be necessary to make effective the action taken.

If at the expiration of 45 days one-third of the voting strength of the chamber has been recorded and two-thirds of the vote thus cast representing at least 20 States is in favor of the proposal the general secretary shall so certify to the board of directors. Thereupon the question shall be recorded as having been passed and it shall be the duty of the board to make the action effective.

SEC. 5 (further consideration). If the question has failed to receive the votes necessary as set forth in the preceding section, but has received the approval of more than one-third of the votes cast it shall be sent out for further consideration under the following conditions:

(a) The opinions received from the various organization members shall be put in type and referred to the proposing member, said member shall have an opportunity to consider them and to add a final argument in support of its project, of such length as the board of directors shall prescribe.

(b) All of these opinions shall be assembled in a printed pamphlet, a copy of which shall be forwarded to each organization member and to each national councillor.

(c) On receipt of the pamphlet it shall be the duty of each organization member to consider the whole project in the light of the opinions expressed in all parts of the country, and to register a definite vote on the proposition within 45 days of the date of mailing of pamphlet. One vote may be cast for each delegate to which the member is entitled in the annual meeting.

If the question shall be approved on this submission under the same terms as in section 4 of this article, it shall be certified to the board of directors as having passed and action by the board shall follow.

SEC. 6 (reference to annual meeting). If on second consideration by mail, as herein provided for, a question shall fail to receive the vote necessary for its passage, but shall have received one-third of the votes cast, it shall be placed upon the program for consideration and action at the next annual meeting.

SEC. 7. Upon approval by the council or board of directors a member may be permitted by petition to place upon the program for consideration at the annual meeting a question which has not been submitted in advance by mail as hereinbefore provided for, but such a question shall not be considered if one-third of the delegates present object thereto, and its submission by mail as hereinbefore provided for shall be ordered on the recording of a two-thirds vote in favor of that method of procedure.

SEC. 8. On all questions before a meeting of this chamber on which a vote is taken viva voce, or by division, each duly accredited delegate from an organization member shall be entitled to one vote in person. A yea-and-nay vote may be ordered on any question upon demand of one-fourth of the delegates present officially representing such organization members, and on such ballot only the votes of said members shall be counted. On all yea-and-nay votes each organization member shall be entitled to as many votes as there are delegates present

representing said member. All yea-and-nay votes shall be fully recorded and published in the proceedings. An affirmative vote of two-thirds shall be necessary to carry the approval of the Chamber of Commerce of the United States of America upon any proposition or resolution which may appear upon the official program or be added thereto, as provided for by these by-laws: *Provided, however*, That such a vote shall be void and of no effect unless the attendance at the meeting shall represent one-third of the voting strength of the chamber from at least 20 States.

Sec. 9 (general provisions). (1) If on the first submission of a question less than one-third of the votes cast favor the proposal it shall not be advanced for second consideration in the form of a pamphlet, except with the approval of the board of directors: *Provided, however*, That upon petition of the proposing member with the indorsement of 10 additional organization members from as many States the board of directors shall order second consideration of the question by mail. If it shall fail to receive one-third of the votes cast on original submission as hereinbefore provided for, the board of directors may, however, place it upon the program for discussion at the annual meeting.

(2) The list of questions to be considered at each annual meeting shall be mailed to each member at least 30 days in advance of such meeting.

(3) No pamphlet prepared for second consideration as above set forth shall be mailed to the members of the chamber less than 40 days before the annual meeting.

(4) No question shall be received from an organization member for submission to the chamber by mail, or at the annual meeting within 40 days of the date of said annual meeting, unless by a two-thirds vote of the board of directors.

(5) If any organization member shall refrain from expressing opinion on a question submitted by mail, and said question having failed of passage is referred to the annual meeting, said member shall not be entitled to the privilege of the floor for the purpose of debating said question, except by a three-fourths vote of the delegates present.

(6) If a question has been submitted by mail and the time for registration of votes respecting it has not expired before notice of the annual meeting is sent out, it shall be considered as a pending question, and shall go upon the program for action at the annual meeting.

(7) On a question submitted to referendum no organization member found to have voted with the minority shall be deemed to impair its standing in this chamber by adhering to its position or by continuing its efforts in support thereof.

[Ballot (To be detached).]

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA.

*Washington, D. C., December 16, 1916.*

To the SECRETARY:

Your organization, as a member of the Chamber of Commerce of the United States of America, is requested to register its vote upon the questions submitted herewith on this ballot, which is to be detached and sent by registered mail at the earliest date practicable to the general secretary at the national headquarters, Riggs Building, Washington, D. C.

This referendum is taken for the instruction and guidance of the board of directors in its action upon the questions presented.

By order of the board of directors.

ELIOT H. GOODWIN,  
*General Secretary.*

This ballot will be counted only if received at national headquarters, Riggs Building, Washington, D. C., on or before January 30, 1917. (See By-laws, art. 10, on inside of cover.)

-----, 1916.

To the GENERAL SECRETARY OF THE CHAMBER OF COMMERCE  
OF THE UNITED STATES OF AMERICA,  
*Riggs Building, Washington, D. C.*

SIR: The ----- is a member in good standing in  
(Name of organization.)  
the Chamber of Commerce of the United States of America, and having a total  
membership of ----- is entitled to ----- votes. It desires these votes to  
be recorded as noted below.

1. Shall existing law be so amended or supplemented as to require full public investigation of the merits of every dispute between railroad carriers of interstate commerce and their employees, to be instituted and completed before any steps tending to the interruption of transportation shall be attempted? (See p. 4.)

	In favor.
	Opposed.

2. Shall existing law be so amended or supplemented as to provide that upon any board of investigation or arbitration of disputes between railroad carriers of interstate commerce and their employees, the employers and employees shall have equal representation, and the public, as having paramount interest, shall have a majority representation? (See p. 4.)

	In favor.
	Opposed.

3. Should Congress establish a permanent statistical division under the Interstate Commerce Commission to study and compile statistics relating to wages and conditions of service upon railways, the records and services of this division to be immediately available to boards of investigation or arbitration considering disputes between railways and their employees? (See p. 4.)

	In favor.
	Opposed.

Attest:

-----  
(Signature of president or secretary.)

[Duplicate ballot (not to be detached).]

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,  
*Washington, D. C., December 16, 1916.*

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	In favor.
	Opposed.

2. Shall existing law be so amended or supplemented as to provide that upon any board of investigation or arbitration of disputes between railroad carriers of interstate commerce and their employees, the employers and employees shall have equal representation, and the public, as having paramount interest, shall have a majority representation? (See p. 4.)

	In favor.
	Opposed.

3. Should Congress establish a permanent statistical division under the Interstate Commerce Commission to study and compile statistics relating to wages and conditions of service upon railways, the records and services of this division to be immediately available to boards of investigation or arbitration considering disputes between railways and their employees? (See p. 4.)

	In favor.
	Opposed.

Attest:

(Signature of president or secretary.)

[*Explanation.*—In order to inform the members as fully as practicable on the subject submitted to referendum a carefully selected committee is appointed to analyze each question and report its conclusions. The purpose of the referendum is to ascertain the opinion of the commercial organizations of the country, not to secure the approval of the recommendations voiced in the report. The board of directors in authorizing submission of a report to referendum neither approves the report nor dissents from it. Only the vote of the member organizations can commit the Chamber of Commerce of the United States for or against any of the recommendations submitted by the committee and until such vote is taken the report rests solely upon the authority of those who have signed it.]

#### REFERENDUM ON THE REPORT OF THE RAILROAD COMMITTEE ON THE PREVENTION OF STRIKES AND LOCKOUTS.

*Statement of question.*—Taking early cognizance of the grave possibilities of differences between the railways and their train-service employees, the board of directors of the national chamber formulated resolutions and presented them to the national council of the chamber, meeting in Washington on February 7, 1916. The national council in turn presented resolutions to the chamber's fourth annual meeting, in session at Washington, February 8–10, 1916, and the annual meeting adopted resolutions, as follows:

Whereas it has come to the attention of the Chamber of Commerce of the United States of America that grave differences are impending between the railroads and certain of their employees which, if not adjusted, may result in serious interruption to transportation, and

Whereas such an interruption of traffic operations of the United States would be a national calamity and, if arising through arbitrary action of either side without the question in dispute being submitted to a careful and impartial analysis, would constitute an act inimical to public welfare and fraught with grave consequences: Be it therefore

*Resolved*, That it is the sense of the Chamber of Commerce of the United States of America that the parties to the controversy should and in the interest

of the public weal must settle their differences without recourse to measures that would impair the public service; and be it further

*Resolved*, That the board of directors of the Chamber of Commerce of the United States appoint a committee which shall carefully and impartially investigate and consider such phases of this critical situation as relate to the interests of commerce and the public and shall from time to time report to the board of directors as to the best means of preserving the public service unimpaired.

A committee appointed in accordance with these resolutions, the committee on the railroad situation, presented a report which became the basis of referendum No. 16, in which 366 organizations filed ballots representing 987 votes in favor of Congress directing an immediate investigation by the Interstate Commerce Commission to ascertain the facts which in reality were at issue, and 29 votes in opposition to such a plan. In October, 1916, this committee presented its final report to the board of directors and asked that it be discharged.

The board of directors then authorized the appointment of a second committee, to be known as the committee on railroads. The members of the committee are: Charles F. Weed, chairman, Boston, Mass.; F. C. Dillard, Sherman, Tex.; R. H. Downman, New Orleans, La.; Dr. Thomas F. Gailor, Memphis, Tenn.; Emory R. Johnson, Philadelphia, Pa.; E. T. Meredith, Des Moines, Iowa; George A. Post, New York, N. Y.; William Z. Ripley, Cambridge, Mass.; G. W. Simmons, St. Louis, Mo.; Alexander W. Smith, Atlanta, Ga.; Edward P. Smith, Omaha, Nebr.; Charles R. Van Hise, Madison, Wis.; Harry A. Wheeler, Chicago, Ill.

At the same time the board of directors called a special meeting of the national council of the chamber to consider current problems of railroad transportation. At sessions in Washington on November 17 and 18 the national council adopted resolutions as follows:

Whereas the national council of the Chamber of Commerce of the United States of America in response to a call of the president and board of directors of the chamber of commerce has in special meeting considered and discussed various phases of the transportation problem: Therefore be it

*Resolved*, That the national council, in accordance with its function as an advisory body, commends to the board of directors and to a special committee authorized to investigate and report on this subject, the careful consideration of the resolutions offered and of the various arguments presented to the council and of the several plans and suggestions to cover specific points and principles involved, all of which are fully set forth in the stenographic reports of the proceedings of the council meeting; and be it further

*Resolved*, That the national council recommends that a referendum or referendum be prepared and submitted, to ascertain the opinion of the business interests of the country, respecting legislation designed:

(a) To prevent interruption of transportation service, pending the settlement of disputes between employers and employees of transportation lines, and to avoid any recurrence of the situation created by the recently threatened railway strike, which situation the President of the United States declared in a statement made public on August 18, 1916, "must never be allowed to arise again";

(b) To make certain that the transportation facilities of the country may be stabilized, improved, and extended to meet and keep pace with the needs of commerce and the entire public.

The railroad committee has proceeded in accordance with the national council's resolution, and has presented a report dealing with prevention of interruption to railroad service which is herewith submitted to referendum vote among the organizations in the membership of the Chamber of Commerce of the United States. The committee will subsequently present a report regarding the other subjects set out in the national council's resolutions.

In this pamphlet are printed: (1) The committee's report; (2) arguments in the affirmative; (3) arguments in the negative; (4) appendices—(A) president's address; (B) existing United States law; (C) Canadian law; results of Canadian law.

*Personnel of committee.*—Weed, Charles F., lawyer, of Boston, president of the Boston Chamber of Commerce; Dillard, F. C., lawyer, of Sherman, Tex., formerly president of the Texas Bar Association; Downman, R. H., lumber manufacturer, of New Orleans, president of the National Lumber Manufacturers' Association; Gailor, Dr. Thomas F., bishop of Tennessee in the Protestant Episcopal Church, chancellor and president of the board of trustees,

University of the South; Johnson, Emory R., professor of transportation and commerce, University of Pennsylvania, Philadelphia, Pa.; Meredith, E. T., editor and publisher of Successful Farming, Des Moines, member of the board of directors, greater Des Moines committee, member of the board of directors of the United States Chamber of Commerce; Post, George A., manufacturer, of New York City, president railway business association; Ripley, William Z., professor of political economy, Harvard University; Simmons, G. W., a manufacturer, of St. Louis, Mo.; vice president Simmons Hardware Co.; Smith, Alexander W., lawyer, of Atlanta, Ga.; Smith, Edward P., lawyer, of Omaha, Nebr.; Van Hise, Charles R., president University of Wisconsin; Wheeler, Harry A., banker, of Chicago, member of the Federal Commission on Second-Class Mail Matter, formerly president of the Chamber of Commerce of the United States, and formerly president of the Chicago Association of Commerce, honorary vice president of the Chamber of Commerce of the United States.

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REPORT OF THE RAILROAD COMMITTEE ON THE PREVENTION OF STRIKES AND LOCKOUTS.

DECEMBER 11, 1916.

To the BOARD OF DIRECTORS OF THE CHAMBER OF COMMERCE OF THE UNITED STATES:

The railroad committee respectfully submits the following report:

The committee has carefully considered the situation resulting from the controversy between the railroads and the four train-service brotherhoods during the summer of 1916, the existing laws, and various suggestions for their modification. There were before the committee the Towne plan, the McClellan plan, and numerous other proposals made at the meeting of the national council of the chamber of commerce held in November, 1916.

The committee is unanimous that the interests of the public are paramount and that provision should be made to insure uninterrupted service by the railroads.

The committee is in full accord with the proposal made by the President of the United States in his address to Congress on December 5, 1916:

"That the operation of the railways of the country shall not be stopped or interrupted by the concerted action of organized bodies of men until a public investigation shall have been instituted which shall make the whole question at issue plain for the judgment of the opinion of the Nation."

The committee therefore strongly approves the principle of the recommendation of the President that Congress enact—

"An amendment of the existing Federal statute which provides for the mediation, conciliation, and arbitration of such controversies as the present by adding to it a provision that, in case the methods of accommodation now provided for should fail, a full public investigation of the merits of every such dispute shall be instituted and completed before a strike or lockout may lawfully be attempted."

The existing Federal statute to which the President referred is the Newlands act passed in 1913.

The committee believes that in amending this act in accordance with the principle of the President's recommendation, while each party to the controversy should be equally represented, the paramount interests of the public require that the public should have a majority representation on boards of investigation or arbitration.

To the end that information may be immediately available in any future controversy, the committee recommends the establishment forthwith, under the Interstate Commerce Commission, of a separate division of statistical inquiry, the function of which shall be to make a statistical study of all questions relating to wages and conditions of service upon the railroads. This division and all data collected by it should at all times be at the service of any board of investigation or arbitration. The committee believes that the establishment of this division should be considered an essential part of the program.

The committee recommends that the board of directors of the Chamber of Commerce of the United States take steps to secure immediately by referendum a vote from its constituent members upon the following questions:

1. Shall existing law be so amended or supplemented as to require full public investigation of the merits of every dispute between railroad carriers of interstate commerce and their employees, to be instituted and completed before any steps tending to the interruption of transportation shall be attempted?

2. Shall existing law be so amended or supplemented as to provide that, upon any board of investigation or arbitration of disputes between railroad carriers of interstate commerce and their employees, the employers and employees shall have equal representation, and the public, as having paramount interest, shall have a majority representation?

3. Shall existing law be so amended or supplemented as to establish a separate, permanent division of the existing statistical department of the Interstate Commerce Commission, the functions of which shall be to make a continuous study of all questions relating to wages and conditions of service upon railroad carriers of interstate commerce and to compile statistics which, together with the records and services of such division, shall be immediately available to any and all boards of investigation or arbitration created to consider disputes between such carriers and their employees?

CHARLES F. WEED, *Chairman*,  
 F. C. DILLARD,  
 R. H. DOWNMAN,  
 THOMAS F. GAILOR,  
 EMORY R. JOHNSON,  
 GEORGE A. POST,  
 WILLIAM Z. RIPLEY,  
 G. W. SIMMONS,  
 ALEXANDER W. SMITH,  
 EDWARD P. SMITH,  
 CHARLES R. VAN HISE,  
 HARRY A. WHEELER,  
*Railroad Committee.*

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#### ARGUMENTS IN FAVOR OF THE COMMITTEE'S REPORT.

I. *The interests of the public are paramount.*—The maintenance of transportation service continuous and unimpaired is of vital importance to every industry in the United States and to every citizen. Therefore the public has a right to insist that transportation service shall be continuous and uninterrupted.

Every industry of any importance must of necessity depend upon the railroads to bring from a distance at least a part of the raw materials it uses and to take to market the greater part of its products. If the railroad service is interrupted even for a short time many industries would close their doors, their employees would be thrown out of work, and their customers would be unable to secure deliveries, and the results of this interruption of the public service would extend to every part of the industrial field. Unemployment would be widespread and the national commerce and industry would be paralyzed.

Every citizen of the United States, especially those who live in cities and constitute about two-thirds of the entire population, must of necessity depend upon the railroads to bring him from a distance a large part of the food and other household supplies that he needs in his daily life. If the railroad service is interrupted even for a day, he would feel it very acutely. For example, in New York City the milk supply would last but a day, the supply of perishable foods less than a week, and the staple foods not more than three or four weeks, so that if there should be a continued suspension of railroad service almost the entire population of the city would face starvation in less than a month.

It is therefore clear that if any interruption of railroad transportation is threatened the public has a right to insist that it must not occur before complete and authoritative information in regard to the causes of the threatened interruption has been obtained and laid before the public.

II. *The right of the public to uninterrupted transportation service is superior to any private right.*—The Constitution of the United States gives to every citizen certain rights and guarantees that he shall be protected in their enjoyment just as far as it does not interfere with the rights of others. The Constitution does not, however, give to any group or class of men rights that are superior to or equal to those rights of the public which are essential to the public welfare.

The public welfare demands that at all times the enormous population of our cities shall be supplied regularly with food and other necessities, and that the industries of the country shall be able to depend without question on continued transportation service for both freight and passengers.

Therefore, the public authorities have a right to insist that when there is any conflict between the rights claimed by a particular group of men and the unquestioned rights of the public the welfare of the public shall first be considered, and the rights of the public shall be regarded as superior to the rights claimed by any particular group.

III. *The plan recommended to Congress by the President of the United States is shown by experience to be the most successful plan that has yet been devised for the prevention of strikes and lockouts or for the mitigation of their evils.*—The plan recommended by President Wilson in his message to Congress December 5, 1916, is similar to the plan adopted by Canada nine years ago when Parliament passed the Canadian industrial disputes act. This plan has not resulted in preventing strikes entirely in the public utilities of Canada, but it has very greatly reduced their number and lessened the evils resulting from them.

The Canadian Government feels so confident that this is the best plan that has yet been devised that within the last year it has extended the operation of the law to all industries producing war materials, and now proposes to extend certain provisions of the law to private industries.

It is thus evident that the principle involved in the recommendation of the President has been tested successfully by a people similar to our own, and that if we should adopt the proposed plan we would be taking a very important step toward the satisfactory settlement of railroad labor disputes.

IV. *The committee's proposal would not supersede any existing methods for adjustment but would add a new and important procedure.*—Federal law, in the Newlands Act, now provides for three kinds of governmental intervention in railroad labor disputes—mediation, conciliation, and arbitration. The committee's proposal supersedes none of these but adds an efficient supplemental procedure. Whereas the methods of Federal intervention now existing are wholly ineffective without the consent of both employees and employers who are concerned and are thwarted by rejection on the part of either side, the new method would leave no choice to the parties with a narrow interest, having its effect by virtue of the will of the public exerted in its own interest.

V. *The public should have a majority representation on any board appointed to investigate or arbitrate a dispute between interstate railroads and their employees.*—The present law provides that when a board of investigation or arbitration is appointed to deal with a railroad labor dispute each party to the controversy—the railroad, the employees, and the public—shall have equal representation in the board.

This plan has been objected to on the ground that the representatives of the direct parties to the controversy, i. e., of the railroads and the employees, are necessarily advocates, so that the representative of the public becomes in reality an umpire who is called upon not to adjudicate a controversy, but to settle a dispute.

It is deemed important that the direct parties to the controversy should continue to have on each board representatives who are entirely familiar with the question in dispute and are in a position to lay before the board all of the facts that have a bearing on these questions, but it is equally important that a majority of the members of the board should be free from any obligation direct or indirect to advance the interests of one or the other of the direct parties to the controversy.

It is therefore proposed that the public shall have a majority representation on every board.

VI. *The public interests demand that a board of investigation or arbitration shall have from the beginning of its work all of the assistance that can be furnished by expert Government statisticians who have for a considerable period made a continuous study of railroad labor conditions on the transportation systems of the country as a whole.*—The present law provides for the voluntary arbitration of each railroad labor dispute by a special board, but it does not make adequate provision for a full public investigation of the facts. This is a serious defect in the present plan and should be remedied.

It is not possible for a board of investigation or arbitration to prepare for itself all of the statistics in regard to railroad wages and working conditions that it will need in order to decide the questions in dispute. There should be some authoritative source from which the board can secure these facts as soon as it is appointed.



It is therefore proposed that Congress create in the Interstate Commerce Commission a division of railroad labor statistics, fully equipped and properly representative. The duties of this division would be to assemble and maintain a complete statistical statement of all of the facts which either the railroads or their employees believe will be needed in future disputes; to secure in advance agreement by both sides, as far as possible, on the facts; to advise boards of investigation or arbitration as to the procedure and standards adopted by previous boards, the difficulties they have encountered, and the methods used in dealing with those difficulties; and to furnish information in regard to railroad labor conditions not only to the Interstate Commerce Commission and the special boards of investigation or arbitration appointed under the Newlands Act, but also to Congress and the public.

VII. *The committee's proposal provides a method of utilizing the impartial power of public opinion, a form of compulsion manifestly appropriate in a democracy.*—That public opinion is capable of forcing partisans to come to a settlement which is just between themselves and fair to the public has been admitted by both sides in recent controversies in their wide appeals through the press and other mediums of publicity. At present such appeals and most of the information received by the public inevitably have partisan bias. The committee's proposal, however, would provide the public with unprejudiced, nonpartisan, and essential information and thus afford a sound basis for public judgment. Such a public opinion will either bring the contending parties to an amicable adjustment between themselves or will force them to submit their differences to arbitration, in either event avoiding an interruption of the transportation services upon which every community must rely. That arbitration has been distasteful to either side in some instances is no objection, since any just reason for finding fault with boards or methods as now provided by law can be obviated through amendments.

Public opinion is the basis of our law and of all our institutions. It is the highest force to which we appeal in our public affairs. It is peculiarly appropriate as the power which, when impartially informed, will deal justly and effectively with differences arising between two such important parts of the public as railway employees and railway managers and the persons they represent.

#### ARGUMENTS AGAINST THE COMMITTEE'S REPORT.

I. *An investigation and publication of the results will not always serve to enlighten public opinion, since many controversies involve questions different from the justice of an increase in wages or of a decrease in hours.*—The situation caused by four large bodies of employees on roads throughout the country acting in unison in making certain demands, perhaps simple in substance but intricate in form, at least from the point of view of the public, is abnormal. However useful investigation might be in such cases, it might not serve a useful purpose in many other controversies which arise regarding the interpretation of written agreements, substitution of negroes for white firemen, the jurisdiction of a union over certain employees, various questions arising out of "open" or "closed" shops, methods of promotion such as the use of the "seniority" rule, justification for the discharge of employees, etc. In other words, the remedy of compulsory investigation can at most be suitable only for exceptional cases, such as the concerted action of four brotherhoods of employees on practically all the railways.

II. *Employees are entitled to act collectively, even when they are in the service of enterprises of public utility.*—Concentration of capital and management is practiced by the railways, as by other modern enterprises. In the case of the engineers in eastern territory arbitrated in 1912 the arbitrators said that although 52 roads were nominally before them a large number were controlled by a comparatively small number of systems. Whether roads are consolidated in management or separate, the men are justified in acting collectively to care for their interests. Being employees of large private enterprises managed primarily upon ordinary business principles for private gain, they can not rely upon individual bargains or upon the liberality of managers who are employed for the purpose of making their roads successful investments.

To collective bargaining a right to act promptly and in concert is essential. A suspension of this right even for a brief period would very seriously impair it.

III. *Even temporary prohibition of strikes and lockouts may be ineffectual.*—Possibility of fine and imprisonment will not deter men from leaving their em-

ployment in concert, if they feel they have sufficient cause to act together. They can proceed in such a way as to make proof of their violation of any prohibitory law well-nigh or quite impossible with our present means for detection of lawbreaking. Even if detection were possible, the jails would not suffice to hold the men who might be involved.

Similarly, a railway might by gradually lessening its services achieve the results of a lockout without affording such evidence as would serve to convict its officers in court.

IV. *The proposal makes no provision to protect the public after a board of investigation has made its report, except in so far as public opinion may be effective.*—The report of a board of investigation has no effect otherwise than by informing public opinion. Except in so far as public opinion may have coercive effect, either employees or employers may disregard the report, and the employees may go on strike because of their original contention or for like reason the employers may take any action that is now legally open to them. In other words, the committee's proposal does not indicate a method by which, upon the failure of public opinion to bring about an amicable adjustment, the public interest in unimpaired and uninterrupted transportation service will be protected.

V. *Any prohibition of strikes contains an element of incompleteness unless there is regulation of other items of railway expenditure than labor.*—The public's final interest may be in uninterrupted railway service, but its immediate interest, and the interest most often appealed to, is pecuniary—the rates it pays for transportation of persons and foods. These rates are influenced by expenditures of the roads for all purposes. It is unjust to deal by restrictive legislation with one element—expenditures on account of labor and its conditions of work—and not deal with other elements such as the prices paid for equipment and supplies, the consideration received for securities on which interest and dividends are paid, etc. In the 12 months ended with June 30, 1915, expenditures for wages were approximately \$1,150,000,000, for interest and dividends about \$1,088,000,000, and for supplies of all kinds, including coal, in the neighborhood of \$700,000,000. In the year ended with June 30, 1914, these figures were approximately \$1,345,000,000 for labor and about \$930,000,000 for interest and dividends; and in the year ended on June 30, 1913, the corresponding figures were \$1,330,000,000 and \$834,000,000.

VI. *The public's fundamental interest is not primarily in the rates it pays for transportation but in the welfare of a large body of its own members; this interest is not necessarily promoted by having on boards a majority of members representing the public.*—Even though railways are public utilities they are private enterprises privately operated. Their size is so vast, and their operations are on such a large scale, that members of the public who have no earlier knowledge of the intricacies and difficulties of the railway industry will not be able readily to grasp the problems at issue. These are matters for experts. Consequently, the public's best interest will be served by having problems of railway labor passed upon by men who have experience with these problems. Otherwise the results of investigation and arbitration may be acceptable to neither side and instead of composing differences may result in further controversies.

The part of the population which depends for its livelihood upon employment by the railroads is very considerable, reaching a figure which is between 5 and 10 per cent of the whole population.

#### [Appendix A.]

#### PRESIDENT'S ADDRESS TO CONGRESS DECEMBER 5, 1916—PART DEALING WITH RAILWAYS.

GENTLEMEN OF THE CONGRESS: In fulfilling at this time the duty laid upon me by the Constitution, of communicating to you from time to time information of the state of the Union and recommending to your consideration such legislative measures as may be judged necessary and expedient, I shall continue the practice, which I hope has been acceptable to you, of leaving to the reports of the several heads of the executive departments the elaboration of the detailed needs of the public service and confine myself to those matters of more general public policy with which it seems necessary and feasible to deal at the present session of the Congress.

I realize the limitations of time under which you will necessarily act at this session, and shall make my suggestions as few as possible; but there were some things left undone at the last session which there will now be time to complete, and which it seems necessary in the interest of the public to do at once.

In the first place, it seems to me imperatively necessary that the earliest possible consideration and action should be accorded the remaining measures of the program of settlement and regulation which I had occasion to recommend to you at the close of your last session in view of the public dangers disclosed by the unaccommodated difficulties which then existed, and which still unhappily continue to exist, between the railroads of the country and their locomotive engineers, conductors, and trainmen.

I then recommended:

First, immediate provision for the enlargement and administrative reorganization of the Interstate Commerce Commission along the lines embodied in the bill recently passed by the House of Representatives, and now awaiting action by the Senate, in order that the commission may be enabled to deal with the many great and various duties now devolving upon it with a promptness and thoroughness which are, with its present constitution and means of action, practically impossible.

Second, the establishment of an eight-hour day as the legal basis alike of work and of wages in the employment of all railway employees who are actually engaged in the work of operating trains in interstate transportation.

Third, the authorization of the appointment by the President of a small body of men to observe the actual results in experience of the adoption of the eight-hour day in railway transportation alike for the men and for the railroads.

Fourth, explicit approval by the Congress of the consideration by the Interstate Commerce Commission of an increase of freight rates to meet such additional expenditures by the railroads as may have been rendered necessary by the adoption of the eight-hour day, and which have not been offset by administrative readjustments and economies, should the facts disclosed justify the increase.

Fifth, an amendment of the existing Federal statute which provides for the mediation, conciliation, and arbitration of such controversies as the present by adding to it a provision that, in case the methods of accommodation now provided for should fail, and full public investigation of the merits of every such dispute shall be instituted and completed before a strike or lockout may lawfully be attempted.

And, sixth, the lodgment in the hands of the Executive of the power, in case of military necessity, to take control of such portions and such rolling stock of the railways of the country as may be required for military use, and to operate them for military purposes, with authority to draft into the military service of the United States such train crews and administrative officials as the circumstances require for their safe and efficient use.

The second and third of these recommendations the Congress immediately acted on: It established the eight-hour day as the legal basis of work and wages in train service, and it authorized the appointment of a commission to observe and report upon the practical results, deeming these the measures most immediately needed; but it postponed action upon the other suggestions until an opportunity should be offered for a more deliberate consideration of them. The fourth recommendation I do not deem it necessary to renew. The power of the Interstate Commerce Commission to grant an increase of rates on the ground referred to is indisputably clear, and a recommendation by the Congress with regard to such a matter might seem to draw in question the scope of the commission's authority or its inclination to do justice when there is no reason to doubt either.

The other suggestions—the increase in the Interstate Commerce Commission's membership and in its facilities for performing its manifold duties, the provision for full public investigation and assessment of industrial disputes, and the grant to the Executive of the power to control and operate the railways when necessary in time of war or other like public necessity—I now very earnestly renew.

The necessity for such legislation is manifest and pressing. Those who have intrusted us with the responsibility and duty of serving and safeguarding them in such matters would find it hard, I believe, to excuse a failure to act upon these grave matters or any unnecessary postponement of action upon them.

Not only does the Interstate Commerce Commission now find it practically impossible, with its present membership and organization, to perform its great

functions promptly and thoroughly, but it is not unlikely that it may presently be found advisable to add to its duties still others equally heavy and exacting. It must first be perfected as an administrative instrument.

The country can not and should not consent to remain any longer exposed to profound industrial disturbances for lack of additional means of arbitration and conciliation which the Congress can easily and promptly supply. And all will agree that there must be no doubt as to the power of the Executive to make immediate and uninterrupted use of the railroads for the concentration of the military forces of the Nation wherever they are needed and whenever they are needed.

This is a program of regulation, prevention, and administrative efficiency which argues its own case in the mere statement of it. With regard to one of its items, the increase in the efficiency of the Interstate Commerce Commission, the House of Representatives has already acted; its action needs only the concurrence of the Senate.

I would hesitate to recommend—and, I dare say, the Congress would hesitate to act upon the suggestion should I make it—that any man in any occupation should be obliged by law to continue in an employment which he desired to leave. To pass a law which forbade or prevented the individual workman to leave his work before receiving the approval of society in doing so would be to adopt a new principle into our jurisprudence which, I take it for granted, we are not prepared to introduce. But the proposal that the operation of the railways of the country shall not be stopped or interrupted by the concerted action of organized bodies of men until a public investigation shall have been instituted which shall make the whole question at issue plain for the judgment of the opinion of the Nation is not to propose any such principle. It is based upon the very different principle that the concerted action of powerful bodies of men shall not be permitted to stop the industrial processes of the Nation, at any rate before the Nation shall have had an opportunity to acquaint itself with the merits of the case as between employee and employer, time to form its opinion upon an impartial statement of the merits, and opportunity to consider all practicable means of conciliation or arbitration. I can see nothing in that proposition but the justifiable safeguarding by society of the necessary processes of its very life. There is nothing arbitrary or unjust in it unless it be arbitrarily and unjustly done. It can and should be done with a full and scrupulous regard for the interests and liberties of all concerned as well as for the permanent interests of society itself.

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[Appendix B.]

EXISTING UNITED STATES LAW.

*Act of 1888.*

Adjustment of controversies between railways and their employees first found a place in Federal statutes in 1888. This law had two parts. In the first place, when a controversy arose the President could create a commission of three—two appointees and the Commissioner of Labor—who had a duty of inquiring into the causes, the conditions surrounding the difficulty, and the best means for reaching an adjustment, making a report to the President and to Congress. The services of such a commission in the interest of adjustment could also be tendered to the parties by the President. In the second place, the law gave to boards of arbitration voluntarily chosen by parties power to administer oaths, issue subpoenas, compel production of papers, etc. This law was never used.

*Newlands Act.*

The basis of the present Newlands Act was laid by the Erdman Act of 1898, dealing only with employees directly engaged in moving trains. It provided voluntary mediation, utilized only upon application of either party, and accepted by the other. The Federal mediators were the chairman of the Interstate Commerce Commission and the Commissioner of Labor. Voluntary arbitration by boards chosen primarily by the parties was also provided. Arbitrators had the power to administer oaths, etc., and there was a limited appeal to the courts.

For eight years this law was not invoked although one attempt to use it occurred, but during the following five years it was utilized in 60 instances,

and methods of procedure were well established. Altogether, these appeals to the Erdman Act resulted in 13 formal cases of arbitration. Through mediation or arbitration a total of 61 cases were settled under this law.

Circumstances in the summer of 1913 led to rather hasty legislation modifying the Erdman Act into the present Newlands's Act. Two permanent Federal officials devoting their whole attention to controversies between employees engaged in train operation or train service and their employers, and the orderly adjustment of such controversies, were authorized. In order to meet criticisms which had been made of three-member boards of arbitration on the ground that the third, neutral member, had too much power six-member boards were authorized—two members to be selected by each party and two neutral members representing the public.

This legislation was requested by the President in view of the emergency caused by demands made by conductors and trainmen upon 42 eastern roads. Negotiations between the men and the roads had resulted in the roads taking the position that wages were already adequate and working conditions were favorable. When the men had voted to strike and the situation was acute both sides agreed to arbitrate in the event the law was changed in the ways outlined above.

Under the Newlands Act 56 cases were settled to June 30, 1915.

#### *Adamson Act.*

In the law passed in September, 1916, dealing primarily with the basis of pay for employees engaged in the operation of trains there is provision for a temporary "eight-hour-day commission" of three members, appointed by the President, with duties of observing the operation of the wage part of the law for a period of six to nine months and of reporting to the President within three months of the end of the observation period. This commission has the powers usually conferred upon arbitration boards to administer oaths, issue subpoenas, etc.

[Appendix C.<sup>1</sup>]

#### CANADIAN LAW.

##### *Industrial Disputes Investigation Act.*

Beginning in 1903, Canada has gradually developed a statute which is intended "to aid in the prevention and settlement of strikes and lockouts in mines and industries connected with public utilities." This law affects railways and their employees.

Administration is in the hands of the minister of labor. Whenever the parties are unable to settle a dispute either may apply for the appointment of a board of conciliation and investigation, one nominated by each side and the third chosen by these two. This board has two duties: (1) To endeavor to bring about a settlement and (2) to inquire expeditiously into all matters affecting the merits of the controversy and, in case it does not effect a settlement, to make a report to the minister of labor, including its recommendations for settlement according to the merits and substantial justice. This report is published.

Before a dispute has been referred to a board of conciliation and investigation and while it is pending before a board employers may not lock out the men, and the employees can not go on strike. For violations of the law in this regard there are penalties in the form of fines.

This act does not attempt compulsory arbitration. After a board has made its report the parties may proceed as they see fit.

Since 1907 some 212 disputes have come under the Canadian law, resulting in the creation of boards in 182 cases. Of the total number of disputes affected by the law, 85 affected railways. In seven instances proceedings under the law did not avert strikes.

*Digest of operations under the industrial disputes investigation act, 1907.*

[Proceedings from Mar. 22, 1907, to Oct. 18, 1916.]

Industries affected.	Number of disputes referred under act.	Number of strikes not averted or ended.
I. Disputes affecting mines and public utilities:		
1. Mines—		
(a) Coal.....	44	6
(b) Metal.....	15	5
Total mines.....	59	11
2. Transportation and communication—		
(a) Railways.....	85	7
(b) Street railways.....	27	2
(c) Shipping.....	11	0
(d) Commercial telegraphy.....	3	0
(e) Telephones.....	2	0
Total transportation and communication.....	128	9
3. Light and power.....	4	0
4. Municipal public utilities.....	9	1
Total affecting mines and public utilities.....	200	21
II. Disputes affecting other than mines and public utilities.....	12	0
Total.....	212	21

The total number of boards of conciliation and investigation established under the act during the period is 182.

Of the 212 cases in which application was made for the establishment of a board of conciliation and investigation, 167 were reported upon by boards, 29 were settled without the establishment of boards, 8 were settled while board was in process of constitution, 1 board was restrained by the court of review from proceeding with its investigation, 6 are being dealt with by boards at the present time, and 1 is being held in abeyance to permit of a probable settlement.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,  
Washington, D. C., January 2, 1917.

Hon. FRANCIS G. NEWANDS,  
Chairman Committee on Interstate Commerce,  
United States Senate, Washington, D. C.

DEAR SIR: Your committee is to-day, we understand, beginning hearings regarding the desirability of legislation which would prevent interruption of railway transportation by reason of disputes between railways and their employees, at least until the public has before it an impartial report concerning the questions that are involved.

In this connection we wish to place before you and your committee a report presented in December by a committee of the Chamber of Commerce of the United States. This report you will find at pages 3 and 4 of the inclosed pamphlet, and the personnel of the committee you will find at page 2.

As yet this report represents only the point of view of the committee that signed it, since the time—45 days—which must elapse before the referendum which is necessary in our organization can be completed will not expire until January 30, 1917. Before that time, the position of the Chamber of Commerce of the United States is not formally determined and can not be forecast, except in so far as the chamber has heretofore taken such formal positions as are indicated upon the first page of the pamphlet we inclose.

For your information we also inclose a list of the organizations which are members of the Chamber of Commerce of the United States.

Very truly, yours,

ELLIOT F. GOODWIN, *Secretary.*

**STATEMENT OF HON. WILLIAM L. CHAMBERS, COMMISSIONER  
UNITED STATES BOARD OF MEDIATION AND CONCILIA-  
TION.**

The CHAIRMAN. You may state, Mr. Chambers, what position you hold.

Mr. CHAMBERS. I am United States Commissioner of Mediation and Conciliation, under the act of Congress of July 15, 1913, commonly known as the Newlands law.

Mr. Chairman and gentlemen, the board has prepared a study of arbitration and conciliation laws of the principal countries of the world, providing machinery for the peaceable adjustment of disputes between railroads and employees, the laws of certain countries for the prevention of strikes. We have called this report "Railway Strikes and Lockouts." Briefly stated, Mr. Chairman, this is the first compilation that has ever been made, so far as our information goes, or any attempt to make a compilation of this character, of all the laws of all the countries of the world, relating to mediation, conciliation, and arbitration methods of settlement of controversies between public utilities and their employees.

The board has made no analyses of the laws that relate to public utilities generally, only the features of the laws that relate to railroad service have been analyzed. In connection with each statute, we have presented an analysis and also a table of results of operations under those laws. You will find—there are copies enough to go around for the committee—that the board has not expressed its opinion on the questions involved in pending legislation, but has attempted to furnish, for the information of the committee, and for public use, the laws themselves, their analyses, the results under those laws, in comparison with the Federal laws of our own country. I think we have compiled the matter so that you can see from the results whether the efforts at compulsory mediation or arbitration or compulsory military service, as practiced in other countries, have produced better or less favorable results than the voluntary methods of procedure under our own laws.

Without expressing an opinion upon the subject, I want to call your attention to the fact that the laws of France, with the exception of the provision in regard to military service, are practically the same, or at least are very similar to the laws of this country, and the operation of these laws have perhaps been the most successful because of the fact that the Government of France, through the executive, has the power to call to the colors all the railroad employees in such a condition, for instance, as existed here in August and September of last year. The administration and operation of the laws of France is in that regard radically different from our own.

There are several of these amendments that I particularly wanted to call the attention of the committee to.

Senator POMERENE. Do you think that Congress would have the power, under the present Constitution of this country, to pass this law?

Mr. CHAMBERS. I followed rather closely the remarks of the distinguished gentleman who has just spoken and it seemed to me that the power—merely as a power—is rather unlimited.

Senator POMERENE. I agree with you that the power is very broad, but whether it could be construed to be broad enough to draft men

into the civil service in case of a strike or in case of a lockout is what I would like to have your opinion on.

Mr. CHAMBERS. You propose to do that under another bill for military purposes.

Senator POMERENE. I am not speaking of military conditions. We can do almost anything in the case of war, but in the case of profound peace, except where labor differences between employees and employers—that is what I am talking about.

Mr. CHAMBERS. I would like to ask the Senator to excuse me from answering questions that involve policies, as I am charged with the administration of this law. I would not feel free to do that. It would not be judicious for me to express any views.

Senator POMERENE. It seems to me that in your position, and with your experience, that you would be able to give us some views that would aid the rest of us.

Mr. CHAMBERS. I understood the Senator's question to ask me for an opinion, rather than for the results of my experience, which you will find in this book and in another Senate document on the effect and operation of arbitration under the Federal law.

The CHAIRMAN. What is that other document?

Mr. CHAMBERS. Senate Document No. 493, I think it is. It is published by resolution of the Senate.

Senator BRANDEGEE. Put the correct number in the record, please.

Mr. CHAMBERS. Very well. Senate Document 493.

Mr. Chairman, if you will permit me, I want to call your attention and emphasize the importance of the amendment which otherwise might not seem to carry its proper weight.

Under the second section—I refer to the tentative act, committee prints, No. 2—it is provided that—

whenever a controversy, as hereinbefore defined, concerning wages, hours of labor, or conditions of employment shall arise between an employer and employees subject to this act interrupting or threatening to interrupt the business of said employer or employees to the serious detriment of the public interests, either party to such controversy may apply to said Board of Mediation to assist in settling that controversy.

The amendment, as you will find it in the proposed act, strikes out the words "either party" and substitutes "both parties to such a controversy shall immediately notify the Board of Mediation and Conciliation created by this act," and either party may apply to said board and invoke their services for the purpose of bringing about an amicable adjustment of the controversy.

Since the passage of the Newlands law in July, 1913, there have been only 3 instances out of 66 controversies which probably would, under ordinary conditions, have led to a strike, where a cessation of train movements resulted, and that record will not be found paralleled in the operation and application of any mediation, conciliation, and arbitration laws anywhere else in the world. In each one of these instances the strike resulted without the Board of Mediation's knowing anything about the controversy, sufficiently at least in advance to tender its services. In all the other 63 cases one or the other of the parties or both jointly requested the services of the board or with knowledge of the existing controversy threatening the public interest the board tendered its services and settlements were had, and in the main—and I make the statement in the presence of representatives



of the brotherhoods and railroad representatives, if any be here—in the main those settlements were satisfactory to both parties.

Senator BRANDEGEE. You are in favor of this amendment, are you?

Mr. CHAMBERS. I am in favor of this amendment; yes. The board should be put upon notice by both parties of the existence of the controversy.

Senator BRANDEGEE. That amendment is incorporated in the proposed bill now.

Mr. CHAMBERS. Yes; but for fear that the committee might not understand its purport, and that there might be no objection raised to it later, I wanted to emphasize it.

Now, passing over all the other amendments, and especially the features that paraphrase the Canadian law, I want to suggest an amendment that has not been incorporated in the law. If I had a copy of the president's first message on this subject to Congress, in September, I could point it out exactly. The present Newlands law provides that an award shall be rendered, and if not excepted to within 10 days after its rendition it shall be filed in the district court of the United States in the district where the controversy existed, or where the arbitration is held the court shall render its judgment upon it, and there the law ends—the present law.

In a case in which I was chairman of the board of arbitration, in which 52 railroads were involved, one of the railroads in the West, known as the Clover Leaf route—the Toledo, St. Louis & Western Railroad—notification the board of its withdrawal from the arbitration. As chairman of the board, in consultation with my colleagues, I took the position and so held that the railroads, pending the arbitration, could not withdraw. In that case it appeared that the president of the New York Central Railroad held the power of attorney from that particular road to represent it, was a party to the negotiations, and the arbitrations agreement was signed by the road's representative. After the award was filed and no exceptions had been taken, and the court had entered judgment, the road refused to recognize it and declined to put the award into operation. The firemen's organization applied to the Board of Mediation for some relief under the circumstances, and in the meantime, having become Commissioner of Mediation, I replied that they could take a certified copy of the judgment from New York and have it filed in the State of Illinois, and any individual fireman who had not gotten pay according to the terms of the award could sue the railroad for damages; but as that would mean innumerable suits and the organization as such did not see how it could proceed, I took the subject up with the Attorney General, Mr. McReynolds, but nothing resulted. He found no law that authorized the Department of Justice to act. Now the President, in this first message, near the conclusion of it, makes a suggestion—and in the preparation of these bills that suggestion of the President's seems to have been overlooked. He specifically suggests that the courts of the country should have the right to interpret and enforce the application of these awards.

Senator UNDERWOOD. Just at that point let me ask you a question. As I understand, the bill that you are standing for, Judge, is merely a finding and report. The Newlands bill provides for arbitration, but it is a voluntary arbitration. This provides for an involuntary suspension until a report is made. How can you enforce that report?

Mr. CHAMBERS. I am not referring to the report at all. I am referring to the provisions of the original act, which simply provide for the judgment upon the award in case of arbitration——

Senator UNDERWOOD. That is not involved in this bill.

Mr. CHAMBERS. I suggest it now for the consideration of the committee as having been included in the recommendations of the President, which I consider vital, because I consider the most meritorious and well-founded objection that employees have made to arbitration is that they do not get the benefits of awards that are rendered; that the railroads have exclusive control of their property and the management of its operation, and apply the awards to suit themselves. I am not saying that that is done. It is what the men complain of. I think that about 90 per cent of the advantages of these awards almost immediately go into effect. That has been the experience of my observation, but the men complain that the railroads, having control of the property and its application, apply the award in ways that deprive them of its full benefits, and there is no machinery in existing law for the enforcement of awards.

Senator BRANDEGEE. Have you drawn up a proposed amendment to accomplish that purpose?

Mr. CHAMBERS. I have not.

Senator BRANDEGEE. I should personally like to see one. If you will consult with the Attorney General and submit one on that subject, I should like to see it.

Mr. CHAMBERS. I have already consulted with the Solicitor General, and with your permission I will put in the record what is suggested in that respect.

(The amendment referred to was subsequently submitted and is here printed in full as follows:)

Sec. 8. That the award, being filed in the clerk's office of a district court of the United States as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly at the expiration of ten days from such filing, unless within such ten days either party shall file exceptions thereto for matter of law apparent upon the record, in which case said award shall go into practical operation and judgment be entered accordingly when such exceptions shall have been finally disposed of either by said district court or on appeal therefrom.

At the expiration of ten days from the decision of the district court upon exceptions taken to said award as aforesaid judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided.

The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

If exceptions to an award are finally sustained, judgment shall be entered setting aside the award in whole or in part, but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Any disobedience to a judgment entered as aforesaid shall be treated as a contempt of court and may be proceeded against as in case of like contempts, either upon application by any party in interest or upon information filed by the United States attorney. It shall likewise be competent for the court by which such judgment is entered to issue the writ of mandamus or other appropriate process for the enforcement of the same, upon application by any party in interest or by the United States attorney.

Nothing in this act contained shall be construed to require an employee to render personal service without his consent, and no injunction or other legal process shall be issued which shall compel the performance by any employee against his will of a contract for personal labor or service.

I have several copies of this report which I mentioned and which I should like to distribute.

The CHAIRMAN. Have you any compendium of this report which can be inserted in the record?

Mr. CHAMBERS. There is an index.

The CHAIRMAN. The report itself, I see, is very voluminous, and I did not know but that you had some summary.

Mr. CHAMBERS. I have it, but not in print. I can have a number of typed copies distributed.

The CHAIRMAN. Have you a summary of it in type?

Mr. CHAMBERS. Yes, sir. There is a summary of each law printed in the report itself; and then I have in my hands, which I intended for our office files, a general summary of the whole situation.

Senator BRANDEGEE. Why not leave that here and have it inserted in the record?

Mr. CHAMBERS. I will do that, with pleasure.

(The summary of the report "Railway strikes and lockouts" referred to is here printed in full, as follows:)

Legislative or administrative regulations for the purpose of preventing strikes or bringing about the peaceable and orderly settlement of disputes as to wages and working conditions on railroads have been adopted by all the leading industrial and commercial nations.

A survey of the legislative and other measures which are now effective reveals a remarkable lack of uniformity. Each country or section seems to have worked out its own system from its own experience. In only one or two cases has one nation adopted the plan of another.

In the study of this class of legislation, however, one fact stands out prominently. Two factors have been responsible for antistrike legislation and legislation for the orderly settlement of industrial disputes. One group of countries in framing such legislation has primarily had in mind the protection of the public against the injurious effects of industrial warfare in the railway and other public utility service. Such reasons are evidently responsible for the legislative enactments in Canada, France, Italy, Russia, Roumania, Spain, and Portugal, and the attitude of the railway administration of Germany. On the other hand, the preservation of industrial peace and the advancement in economic welfare of certain industrial classes have been primarily considered in framing the legislation of Australasian countries, and the prevention of industrial conflicts in the railway service has been incidental to these broader purposes.

#### COMPULSORY ADJUSTMENT OF DISPUTES IN AUSTRALASIA.

Among the Australasia countries the general tendency of legislation is to place a limitation, and with practically one exception, a prohibition upon the right to strike upon railway and practically all other classes of industrial workers. Provisions against strikes and lockouts are also accompanied by others for the regulation of wages and working conditions. By way of illustration, in New Zealand, Western Australia, New South Wales, South Australia, and Tasmania, and in the case of interstate disputes covered by the Commonwealth act, the illegality of a strike or lockout is contingent on the contemplated or "actual fixation of wages and other conditions of employment." Complete machinery has also been created for carrying out the intent of the laws. This usually takes one of three forms (1) in which a legal tribunal—an industrial arbitration court—is the principal instrument for the legal settlement of disputes, as in the case of the Commonwealth of Australia; (2) in which boards, composed, apart from the chairman, of employers in, or representing, the trade concerned, take with somewhat more narrowly defined duties, the place of an arbitration court, as in South Australia and Tasmania; and (3) in which there has been evolved a combination of these two plans, as is the case in New South Wales, Queensland, and New Zealand.

#### LIMITED PROHIBITION OF STRIKES.

Another group of countries, on the other hand, such as Canada, the Transvaal, Spain, and Portugal, have not denied employees the right to strike, but have made the exercise of this right contingent upon certain conditions—a notification to the Government of the intention to strike, or after a governmental investigation and report.

In Canada and the Transvaal the characteristic illegality of strikes is quite different from that of Australasian and European countries. The only administrative requirement imposed by the acts in those countries is an investigation as to the cause of an industrial dispute and the publication of a report setting forth these causes. After this has been done, a strike or lockout is legal. It is only pending such an investigation and report that the strike or lockout becomes illegal.

In the case of Spain or Portugal, where the limitation upon the right to strike consists of a notification to the authorities a certain number of days before the strike is to occur, the obvious purpose is to afford time to the government to prevent industrial conflict.

#### ABSOLUTE PROHIBITION OF STRIKES.

In the cases of certain European countries, as Russia, Italy, and Roumania, the right of railway workers or other employees in public-service industries to strike is absolutely prohibited, and no machinery is provided for ventilating grievances. Belgium and Holland also prohibit strikes but have devised, methods for employees to take up grievances or requests with railroad managers. Strikes are not formally prohibited in Germany or Austria among railway workers, but are practically prevented by the control of the authorities over the trade-union affiliations of employees. In Germany, however, administrative machinery has been provided through which transportation workers may have a vent for their grievances. Strikes are not prohibited by formal legislative enactment on French railways, the only limitation being that trains must not be deserted between terminals, but are practically impossible because of the policy of the Government in calling employees to the colors and placing them under military orders in the event of a strike. Italy depends upon the same policy to prevent industrial conflict on her railways.

#### PERMANENT COURTS OF ARBITRATION.

There are also two examples of European legislation which embody a principle for the promotion of industrial peace which has not been adopted elsewhere except in a more drastic form in Australasia. This method consists of a creation of permanent courts of arbitration equally representative of the interests of employers and employees, and endowed, under certain circumstances, with the powers of ordinary courts of justice as regards the compelling of the attendance of witnesses and the production of relevant documents. These two examples are furnished by the Canton of Geneva in Switzerland and the Kingdom of Denmark. Under the Danish law, the courts of arbitration have the further powers of inflicting and enforcing penalties for the nonobservance of collective agreement.

#### GREAT BRITAIN AND THE UNITED STATES.

In Great Britain and the United States there is no abridgement of the right to strike. Both countries have provided official machinery for the adjustment of wage and other difficulties between the railroads and their operating forces. In Great Britain the opportunities for conciliation and arbitration under the conciliation act of 1896 have also been supplemented by a general agreement of 1911 between railway officials and employees which makes provisions for compulsory conciliation of matters in dispute.

#### COMPULSORY CONCILIATION.

Another unique feature of European legislation which might also be mentioned is the law of the Ottoman Empire which provides for compulsory conciliation of strikes and lockouts. Strikes are illegal until an attempt at conciliation has been made by a board equally representative of employers and working people. If no agreement is reached, a strike is legal, but it must not be attended with violence.

#### DIFFICULTY OF DECIDING AS TO EFFECTS OF LEGISLATION.

Although much information is available as to the operation of the different systems of legislation, no general conclusions as to its efficacy can well be drawn. The records illustrate the wide range of the application of the various laws, but an exact statement as to the extent to which lockouts or strikes have been prevented by them would require more exhaustive and more intimate knowledge than is available as to the circumstances under which the reference of disputes to the various acts was made, and as to the extent to which the demands of those moving for such reference have been either conceded or refused. The records of actual contraventions of the laws of the various countries limiting strike action, especially those of Australasia, are incomplete

and official returns of lockouts and strikes, whether involving infringements of the laws or not are not systematically made. As regards the responsibility for the enforcement of the laws restricting the right to strike, there is also some obscurity and there are few data indicating clearly where that responsibility lies; as to how it is interpreted; and as to the policy or practice adopted. The information which is available, however, makes possible some satisfactory conclusions as to the most effective means of preventing strikes and preserving industrial peace.

#### EFFECTIVENESS OF COMPULSORY MEASURES.

Absolute prohibition of strikes has only been practically successful where it has been backed by actual or threatened coercion through armed forces or military law. This is typified by the legislation or measures adopted in Austria, Italy, France, and Roumania, and in a modified way in Belgium and Holland. The Italian law provides for loss of employment and fine or imprisonment of railway employees who strike, but the authorities frankly state that these penalties would be ineffective were it not for the power of the Government to call the strikers to the colors and operate the railways under military law. The great railway strike in France in 1910 was stopped by these same drastic measures. Under Russian law the strikers on a public service corporation may be arrested or imprisoned without court proceedings. In Germany, Austria, Belgium, and Holland the railway employee practically gives up his freedom of action so far as the right to strike is concerned before he enters the railway service, and any possibility of the development of a strike among railway employees is prevented by the detailed supervision and surveillance which the Government authorities exercise over individuals and organizations of the working forces. Added to this is the danger to the employee of losing his opportunity for advancement to an official status, and his pension and retirement privileges in the event that he should incur the displeasure of the railway management through some concerted action.

#### THE OPERATION OF AUSTRALASIAN LAWS.

In Australasia the adoption of compulsory legal measures for the prevention of strikes has not been effective in preventing strikes.

The Commonwealth of Australia, the several constituent States, and the Commonwealth of New Zealand, have during the past 25 years developed elaborate governmental machinery for the determination of wages and working conditions, the prevention of strikes, and the promotion of industrial peace. The primary object of these laws has been to protect the working classes against rates of pay and working conditions which are alleged to be unsatisfactory and to protect employers, industrial workers, and general public against the inconvenience and losses arising from industrial warfare. Under these conditions special attention has been not directed toward the transportation industry and public-utility service. The regulation of wage disputes between public-service corporations and their employees has been subordinate to the broader objects of the industrial program.

The industrial conciliation and arbitration act of New Zealand is perhaps known of the whole body of the Australian labor legislation, largely because it has been in active operation since a year or two after its adoption in 1894. The act has been amended on several occasions.

The great change introduced in the New Zealand Act of 1908 is one by which failing voluntary and informal settlements, the reference of "disputes" in the first instance to special councils of conciliation is made, save with regard to Government railway workers, obligatory. The court remains as an integral part of the structure of the act, but it can be appealed to only if the councils of conciliation fail in the task of adjustment. These councils, although appointed ad hoc to deal with "disputes" and not for a period of years to fix certain specified conditions in a trade, are, alike in their position and as regards their more important duties, of the nature of wages and special boards. The investigative powers of the councils of conciliation are limited to the extent that the trade secrets and business profits and losses are not subject to disclosure.

Authority was granted to the Federal Parliament of Australia to legislate disputes extending beyond the boundaries of any one State by the Constitution of 1900, the law thus authorized being enacted in 1904. The law is of the most inclusive scope as far as employments or occupations are concerned; the court established by it has cognizance of all disputes, actual, pending, or threatened, which are of a geographic extent to bring them within federal purview.

Jurisdiction is obtained by certification by the proper industrial or political authority, by the request of the parties in interest, or by the voluntary action of the presi-

dent of the court. Conciliation is of course the first attempt, which failing, awards of a binding nature may be made.

The system is based on unionism, registers of organizations of employers and employees being kept by an official registrar, whose certifications and records are an essential part of the procedure established by the act. Strikes and lockouts are forbidden under penalties of such severity as to make their occurrence extremely unlikely, while the enforcement of awards is likewise undertaken by levying fines on the offending persons or organizations, members of unions being personally responsible where the union assets are insufficient to meet the fine. Agreements by way of conciliation, when properly authenticated are binding in the same way as awards. The court has the authority to make use of subsidiary bodies and agencies for the securing of data or the decision of technical matters. Amendments extending the authority of the court and strengthening the provisions of the act are evidence that the method is generally approved, though there are of course some unwilling submissions. There has not been since the enactment of the law any strike extending beyond the boundaries of a single State.

The laws of the State of Victoria, although comprising a long series of acts dealing, among other things, with the system of wage regulation through the "special" or wages boards first adopted in 1896, deal only indirectly with the question of strikes or lockouts. The primary object of these acts in so far as they refer to the wages boards is not to prevent active dispute but to insure for the various trades concerned the observance of such conditions as regards wages, hours, and other related matters as may be laid down. In the case of any organized trade for which a wages board has been established, the task of the board, especially when determinations—as in some cases frequently happens—are revised, may correspond closely to that of "compulsory conciliation," but even in trades subject to this form of regulation strikes and lockouts are not illegal under the act.

Like South Australia and Tasmania, Queensland has recently adopted through the wages board act of 1908 the Victorian system of wages boards. As in South Australia, industrial agreements may be ratified in trades or businesses where no boards exist, and when thus ratified have the same force as wages board determinations.

The law of Queensland is administered by an industrial court, consisting of a judge appointed by the governor in council. Local industrial boards are created on the application of prescribed numbers of employers or employees, but only on the recommendation of the court. The court has jurisdiction over certain classes of disputes directly, and over others by way of appeal from the awards of the industrial boards. It may also take over any case where it appears that a board is causing unnecessary or willful delay.

These brief analyses furnish a clear insight into Australasian legislation. The facts available as to the operation of the various laws show that (1) a compulsory arbitration has not brought about industrial peace, and (2) that the existence of legal prohibitions and penalties against strikes have not brought about a cessation of industrial conflict.

It is impossible, obviously, to measure arbitrarily the effect of such legislation. Even the records which are available do not tell of the strikes which might have occurred without legal penalties and restrictions, but which did not happen. At the same time, the data which are at hand plainly indicate a tendency toward the extension of industrial conflict in Australian countries. In 1914, as compared with 1913, the number of industrial disputes in Australia increased from 208 to 337. This tendency was apparent in all of the constituent States of the Commonwealth. The number of working people involved was also considerably larger in 1915, as compared with 1914 as well as the aggregate working days and wages lost. The Official Year-book of Australia for 1914, has the following significant comment relative to the settlement of disputes during that year:

"Of 337 disputes in 1914 only 29 were settled by the machinery of State and Federal industrial acts. A majority were by private negotiation. Wage earners lost \$850,000 through strikes during 1914 and 1915, according to the commonwealth statistician. In 1915, according to the report of the secretary of labor, New Zealand had one woollen mill strike, involving 233 operatives, and six strikes of steamship and wharf labor."

In New Zealand during the fiscal year 1915 a total of 34 industrial agreements were formally arranged, recommendations were secured in 93 cases from conciliation councils, and 71 cases were settled by awards of arbitration boards. In four instances cases for the enforcement of awards were conducted by the labor department, and a total of 330 cases for the enforcement of awards were also brought before magistrates during the same fiscal year. On the other hand, in 1915, the number of disputes brought to the attention of the conciliation commissioners was 101. Of this number 61 were settled by mutual agreement, 23 were partially adjusted, and 17 were referred wholly to the court of arbitration.

So far as the maintenance of industrial peace is concerned, the conciliation factor has, it would seem, been most effective, and has come to be more and more relied upon by the Australasian countries. This is evidenced by the records as to the adjustment of industrial disputes, the tendency in legislation to provide machinery for the settlement of disputes which consists of a combination of wages or conciliation boards and industrial courts, and by the procedure in the arbitration courts themselves, where, either in accordance with legal requirements or from the wisdom of experience, the possibilities of mediating a controversy are exhausted before recourse is had to formal judicial proceedings and awards. The penalties attaching to strikes and lockouts have also evidently been ineffective in preventing industrial conflict or in enforcing awards.

#### THE CANADIAN LAW.

Statistics as to the operation of the Canadian industrial disputes investigation act of 1907, as well as the opinion of reliable and well-informed persons, indicate that "it is a fair conclusion that the act has prevented strikes." No official statement is made as to whether or not this has been due to the compulsory or penal features. All students and investigators of the operation of the law practically agree that its chief merit lies in its conciliatory possibilities. The principal service which the boards have been able to accomplish has been to bring the parties to a controversy together for an amicable settlement. If this is not done the investigating boards seldom make a unanimous report, and two or three divergent reports on one point have little effect on public opinion. From the time of its passage up to the close of the fiscal year 1915 applications had been made for investigating boards in 59 disputes between railroads and their employees. Six of these controversies were settled by direct negotiations between the parties after an application for a board had been made but before the board had been constituted by the Government authorities. In 13 cases the boards by conciliatory measures adjusted the matters in dispute and arranged agreements between the employees and the railroad officials. In cases where a unanimous report was made by the boards—16 in all—an amicable settlement between the parties was reached. Of the remaining 24 cases where the boards made divided reports, 19 were settled either by direct negotiations or through the intervention of the department of labor, 4 were followed by strikes, and 1 by a lockout. These results of the operation of the law are succinctly set forth in the following statement:

Conciliation by board, no report.....	13
Unanimous report by board:	
Settlement.....	16
Strike.....	
Divided report by board:	
Settlement.....	19
Strike.....	4
Direct negotiations without board.....	6
Unanimous report by board, lockout.....	1
Total cases.....	59

The total number of railway disputes dealt with under the act from its passage on March 22, 1907, to October 18, 1916, the latest date for which statistics have been obtained, was 85. The total number of strikes not averted or ended was 7, or, in other words, the act was successfully applied in 91 per cent of cases in which its provisions were invoked. A total of 27 street railway disputes also came under the act during the same period and in all but two cases strikes were averted. In shipping, telephones, and commercial telegraph, 16 cases were covered, in all of which strikes were averted. In all branches of transportation and communication, a total of 128 disputes occurred in which the provisions of the act were invoked, and in all but 9 cases, or in 93 per cent of the total, strikes were averted.

During the year 1912, Sir George Askwith, representing the Board of Trade of Great Britain, made a careful study and analysis of the effects of the Canadian law. His report is undoubtedly the best that has been made as to the operation of the law and contains a critical estimate as to its effectiveness and real strength.

The report was prepared by him for the British Board of Trade in 1912 relative to the operations of the Canadian industrial disputes investigation act of 1907. He spent two months in Canada in making a personal investigation in all parts of the country among all classes of persons. He personally interviewed several hundred employers, workmen, trade-union officials, public men, and Government officials at most of the principal industrial centers. Because of his long experience and prac-

tical knowledge of trades disputes in England, Mr. Askwith was selected to consider how far any developments upon the lines of the Canadian act could be of service to Great Britain in its adjustments of labor difficulties. For these reasons a digest of his report and recommendations is submitted, as follows:

### I. ATTITUDE OF LABOR.

a. Originally, labor was hostile, Mr. Askwith found, not because of any demerits of the act, but because it was thought the object of the passage of the act was to deprive them of the right to strike.

It was passed in the face of the strongest labor opposition—Western Miners and railway employees—who considered the railway conciliation act of 1903 sufficient.

b. Western Miners and many leading trade-unionists have maintained their attitude of hostility. Leaders of railway unions have reversed their former attitude and "no more warmer supporters of the act are to be found in the Dominion than leaders of railway unions."

c. The Canadian Trades Union Congress in 1911 adopted, and in 1912 reiterated its adherence to, the following resolution:

"While this congress still believes in the principle of investigation and conciliation, and while recognizing that benefits have accrued at times to various bodies of workmen under the operation of the Lemieux Act, yet, in view of decisions and rulings and delays of the Department of Labor in connection with the administration of the act, and in consequence of judicial decisions like that of Judge Townsend in the Province of Nova Scotia, determining feeding a starving man, on strike, contrary to the act, is an offense under the act: Be it

*Resolved*, That this congress ask for the repeal of the act."

d. Mr. Askwith discussed the labor opposition to the Canadian act, as follows (stated in a very succinct form):

1. It is claimed that the act hinders the workers from taking advantage of the best moment for securing better conditions. In this connection it is asserted that the owners of all other commodities "can sell or withhold them without any restrictions whatsoever, and, it is asked, why should workmen, who have only their labor to sell, be prevented from disposing of it or withholding it at the moment most favorable to them?" Labor, it is contended, should not be required, any more than the owner of wheat or iron and steel is required, to give 30 days' notice before withdrawing their services from the market.

Mr. Askwith's answer to this criticism is that if wheat, coal, iron, or any other commodity should be so held up as to endanger the interest of society, the public would take action to protect themselves, and it was because of the recognition of these same considerations that society had to take measures to protect itself in the Canadian industrial disputes act of 1907.

Mr. Askwith also asserts that this criticism is also at variance with the well-established methods of procedure of every trade union in Canada and the United States, for the reason that the policy of the unions is not to obtain immediate action, but to bring about discussion and through conferences and discussion to secure a settlement. The Canadian act, he claims, makes possible exhaustive discussion and investigation, and hence encourages a settlement without conflict.

2. Labor leaders, in the second place, according to Mr. Askwith's analysis, say in criticism of the act that employees refuse to accept the recommendations of the boards of investigation appointed under the provisions of the law.

Mr. Askwith's answer to this criticism is that this is expressly permitted by the act, and likewise that employees have a right to strike after the recommendations of the boards have been made public.

3. In the third place, labor contends, Mr. Askwith states, that unnecessary delays by the boards are made in reaching a decision.

Mr. Askwith believes that this is a real difficulty, as unnecessary delay may cause irritation and misunderstanding. At the same time, because of the unusual distances in Canada, the consequent difficulty in selecting and assembling boards, he does not see how more speedy action may be obtained. Furthermore, he is not at all sure that delays are such a disadvantage to the workers who come under the act. He says, "At the same time, I am not sure that any very great actual loss is sustained by either the one side or the other; the recommendations can be made to date back to the time when the application for the board was first made, and frequently, judging from my own experience in this country, as well as what I learned in Canada, time proves a great healer. In any case, this objection is capable of remedy and, although often irritating enough, is not vital."



4. Labor claims further, according to Mr. Askwith, that employers are guilty of exploitation during the period in which strikes are not legally permitted.

Mr. Askwith's conclusion in this connection was that exploitation of this kind had been anticipated before the passage of the act and had undoubtedly occurred, but with the growing acceptance of the spirit of the act, it would probably gradually disappear. Employers, he states, make the same contention against labor, and it was his observation that it was a matter that cut both ways.

5. The contention is further made by labor, Mr. Askwith states, that the parties themselves have a right to settle their own disputes.

Mr. Askwith's conclusion in this respect was (1) that every opportunity has been given to the disputants to settle their own differences for the reason that the board is not requested until an affidavit is made that a strike is imminent, and (2) that this contention neglects the fact that the public have a very vital interest in preventing a strike—their very own subsistence, welfare, or safety may be involved; (3) that there is nothing to gain by permitting parties to settle a dispute by conflict and exhaustion, as the result of which the wrong may be triumphant; and (4) parties to an impending industrial conflict usually need the intervention of a third party as their own attitudes have usually reached an extreme and intemperate stage.

6. As to the additional claim of labor that those in authority had frequently refused to grant boards when requested, Mr. Askwith's observation led him to the opposite conclusion—that the tendency had been to grant boards too freely.

7. The claim that some of the boards were partisan in character, Mr. Askwith found, was urged by both employers and employees. The best answer he was able to make to this was that a large number of the findings of boards was unanimous, being indorsed by the chairman, and representatives of both sides.

The fact that both sides complained of partisanship of boards was also evidence of Mr. Askwith's mind that the boards had pursued an independent course.

NOTE.—Some boards might possibly have some partisan one way, and others another. This would explain the double criticism.

8. The most serious objection which Mr. Askwith found among employees relative to the act arose from certain court decisions which made it illegal to assist any employee engaged in an illegal strike. These decisions, if applied strictly, would lead to very heavy penalties for minor offenses. Mr. Askwith believed that trade-union benefits should be eliminated from the category of such offenses.

9. The claim that there were no methods for interpretation of decisions of boards Mr. Askwith evidently considered invalid for the reason that the act itself contemplated no such methods—publicity being relied upon as the remedy—and under the act boards ceased to exist as soon as reports were made.

NOTE.—Mr. Askwith's answer would not hold good where both parties had agreed to give the findings of the board the force of an arbitration award.

The general conclusion of Mr. Askwith relative to the objections of labor to the act were as follows:

"Generally the objections to the act appeared to me to be either such as would disappear as the act became better understood, or could be remedied by some amendment of the act without altering its main principles."

## II. ATTITUDE OF EMPLOYERS AND THE PUBLIC.

### a. Summary statement.

1. Originally employers, Mr. Askwith found, objected because of their general opposition to State interference, but this objection has largely disappeared.

2. Railway employers, at the time of his inquiry, were especially strong in their support of the act.

3. Public officials almost without exception supported the act; the chief value they saw in it was the conciliatory feature.

4. While employers were generally favorable, they formulated some criticisms to the following effect:

(a) That recommendations of the boards should be fully brought before individual employees for their consideration.

The contention was made that men who had not heard the arguments or who had not received a copy of the report, had an opportunity to secure an account of the boards' recommendations from partisans only. The Government, it was suggested, should so publish and distribute the facts and findings as to ascertain the true feeling of the men based on the facts.

(b) Employers asserted that partisans should not be appointed on the boards.

(1) Advantage of partisans, Mr. Askwith points out, is that they have technical knowledge, but on the other hand, they tend to be advocates.

(2) Impartial men with a general knowledge tend to act as arbitrators.

(3) Tendency, Mr. Askwith found, was to follow latter course as in England, i. e., to appoint impartial men more or less acquainted with the views of each side, who might act as arbitrators. Mr. Askwith considered this the best course to follow.

(c) Employers claim that penalties should be enforced by the government.

(1) Government holds it can not treat lockouts or strikes as a crime, and infliction of penalties should be left to parties concerned, on ground of trespass.

(2) Parties can not well enforce penalties. If employers would prosecute men, it would disrupt their labor force; attempt to get money from men asking for higher wages would be silly; to prosecute labor officials would arouse resentment and dissatisfaction.

Employees can not afford to prosecute employers because of expense of protracted legal proceedings.

(d) Employers urge that unions should be required to incorporate and become legally responsible for damages.

(e) That there should be a method of interpretation of recommendations and settlements. (Mr. Askwith had already pointed out that the act does not contemplate methods of interpretation.)

### III. DIFFERENCES BETWEEN CANADA AND GREAT BRITAIN.

a. Special factors existed in Canada, Mr. Askwith states, as compared with England.

1. International unions in Canada. Disputes extending over boundary lines. Subject to different laws in United States.

2. Foreign-born working population in Canada.

3. Immense distances in Canada.

4. Much larger number of disputes in Canada.

### IV. ASKWITH'S ESTIMATE OF VALUE OF ACT.

a. Conciliation feature is its greatest strength. "In my opinion the real value of the act does not lie in either of these propositions, and certainly not in the second. The pith of the act lies in the permitting the parties and the public to obtain full knowledge of the real cause of the dispute, and in causing suggestions to be made as impartially as possible on the basis of such knowledge for dealing with the existing difficulties, whether a strike or lockout has commenced or not. This action on behalf of the public allows an element of calm judgment to be introduced into the dispute which at the time the parties themselves may be unable to exercise.

"It is claimed, and the claim is backed up by statistics upon a strike or lockout prior to such a judgment have been of great assistance in causing a calm discussion or investigation at an early date. If the power of giving such judgment had existed without the restrictions, and if the various trades affected had been gradually educated to see the advantage of discussion prior to a dispute and had the means by and through which such discussion could take place, it may be that practically similar results would have been obtained, without the difficulty of having a law, the complete enforcement of which is almost impracticable, and which, while it has been accepted in cases where education has existed, has been found very difficult in cases where the law is resented and joint consent has not been in being."

b. Recommends the enactment of a similar law in England.

Since the outbreak of the present European war, the provisions of the Canadian law have been extended to all industries engaged in the production of munitions of war supplies of any description. Prior to the outbreak of the present conflict, the Canadian Department of Labor had prepared a tentative draft of a revision of the original law which embodied all the important amendments and changes which the experience with the operation of the original law had shown to be desirable. To these were also added certain new provisions from the Australasian experience. This tentative draft of a new bill was to have been submitted to Parliament as a Government measure, but action was deferred until the close of the war because it was considered inexpedient to cause any needless controversy while the war was in progress. A copy of the revised draft, together with the comments of the minister of labor have been included in A Study, etc., recently issued by the United States board, etc. The principal amendments proposed are briefly as follows:

1. When both parties agree, any dispute, whatever its nature, may be submitted to a board of investigation for any branch of industry other than mining and transportation.

2. In long continued or serious disputes where no board is requested, the minister of labor is authorized to establish a board on his own initiative.

3. It is not necessary to take a strike vote—or secure authority for a strike—before an application can be made for a board (this would remove one of the principal objections against the act made by the railway labor organizations).

4. Technical defects in an application shall not invalidate a request for a board.
5. The establishment of boards, or their proceedings after establishment, shall not be restrained or prohibited by the courts.
6. Boards may be reconvened to pass upon the application or interpretations of awards and agreements.
7. The onus is put upon the party seeking to make a change in wages or hours of applying for a board where the other party does not consent to the change.
8. After a board has made an investigation and report, a secret vote by ballot is required to be taken before a strike can be legally declared. (This provision is added from the Australasian legislation.)
9. Provision is made for registering collective agreements, and a lockout or strike is forbidden where such agreements are in force. Either party may be relieved from a registered agreement by a report of a board. (This addition is also borrowed from the Australasian legislation.)

The effective feature of the Canadian act has been the conciliatory factor—the opportunity which the boards of investigation have afforded of bringing the parties to a dispute together, and of furnishing the ground for adjusting their differences in the light of the facts and a temperate judgment. So far as this fact has been realized in applying the Canadian act, its provisions have been successful. Even under these conditions, the greatest success has occurred when the proceedings of the boards have been informal, and where the attempt has been made to bring disputants to an agreement. Where the inquiries of the boards have been conducted in a judicial or technical way, the results have in general not been so satisfactory. This has been the testimony of Sir George Askwith and other impartial observers.

Apparently the effectiveness of punitive provisions of the law has been disappointing. Prosecutions must be made by the injured party. Labor claims that it is too expensive to bring and sustain action against employers in the courts. The employer, on the other hand, finds it inexpedient to prosecute labor because it creates additional unrest and dissatisfaction, and in case of imprisonment disrupts his working forces in a country where labor is scarce.

The amendments embody in the revised tentative draft of the act, which it is proposed by the Government to put through Parliament in the future remedies all the serious defects which have been found in the law's operation. This is especially true of the criticisms of labor organizations. Their main arguments against the law are squarely met in the changes providing for a speedy organization of boards and for the removal of the present provision to the effect that a strike vote must be had before an application may be made for a board. The proposed addition to the effect that after a board of investigation has reported that a secret ballot must be taken before a strike must be declared is designed to force, so far as is possible, a deliberate decision on the rank or file of a reorganization before an industrial conflict is participated in.

#### THE EXPERIENCE OF THE UNITED STATES.

In the United States, the only country except Great Britain which has no law abridging the right to strike, except the recently enacted "Adamson law" the most pronounced success in dealing with disputes between railways and their employees has been attained. This success has been reached through the principle of voluntary mediation.

Legislation in the United States for the adjustment of grievances between the railroads and their employees had its inception in the year 1888. A law in October of that year provided for voluntary arbitration and practically for compulsory investigation of railway wage disputes. The provisions of this act, however, were never utilized and it was superseded in June, 1898, by what was known as the Erdman law. This legislation provided machinery for the mediation and arbitration of controversies affecting railroads and their train-service employees, and was the basis of existing legislation. During the eight years following the passage of the law only one attempt was made to take advantage of its provisions and strikes affecting transportation were of common occurrence. During the next five years, however, methods of procedure under the law were fully developed and its effectiveness established, as many as 61 cases being settled on request of the parties, either by mediation or by arbitration in accordance with provisions of the Erdman law. Seven of these cases were concerted movements, involving in each instance a large number of railroads, in one case as many as 64 roads. Of these 61 cases coming under the Erdman law during the 14 years of its existence, 28 were settled through mediation, 8 were settled by mediation and arbitration, and 4 by arbitration alone. In the remaining 21 cases the services of the mediators, requested by one of the parties, were either refused by the other or direct settlements were reached between the parties after the services of the mediators were invoked without employing them or resorting to arbitration.

The next step in legislation relative to mediation and arbitration was the so-called Newlands law, approved July 15, 1913.

The law in general reenacted the provisions of the Erdman law relative to mediation. It also provided for three member boards of arbitration, as authorized by the Erdman act, but in addition, in order to meet the criticism of three member boards placing too much power in the hands of the neutral arbitrator, it provided further for six-member boards of arbitration, composed of two representatives from each side to a controversy and two neutral members representing the public.

The immediate cause for the passage of the present law grew out of the demands of the conductors and trainmen, which had been presented in a concerted movement some month previously to 42 eastern railroads in what is known as eastern associated territory. The direct negotiations between the parties resulted in a refusal by the railroads to grant the demands of the men on the ground that the rates of wages then prevailing were adequate and that the employees were working under favorable conditions. A strike vote had been taken, resulting in some 97 per cent of the employees voting to withdraw from the service of the railroads unless their demands were complied with. The situation was an aggravated one and reached an acute stage early in July, 1913. The public mind was excited, and the bill, which had been pending in Congress for some months, was, upon the advice of the President, promptly enacted into law to meet the emergency.

From the approval of the Newlands law on July 15, 1913, up to January 1, 1917, a total of 65 controversies have been adjusted through the Board of Mediation and Conciliation. Of this number 48 cases were settled by mediation, 7 were adjusted by arbitration, and 5 by mediation and arbitration. In 2 cases arbitration is pending, hearings beginning January 8, 1917. In one case which the board attempted to mediate a strike was arrested by congressional action. In one case settlement was reached between the parties themselves after the board had begun mediation proceedings. In one other case mediation proceedings resulted in an arbitration agreement, but before the arbitration actually began a settlement on basis suggested in mediation was arrived at between the parties.

#### CONCILIATION IN GREAT BRITAIN.

The experience in Great Britain in dealing with disputes between transportation employees and the railroads finally led to the adoption of the principle in 1911 of voluntary conciliation, with the further provision that points which could not be adjusted by the interested parties should be left to the decision of an impartial arbitrator or umpire. This method has met with success, not only in settling railway disputes, but those affecting other public utilities and all branches of mining and manufacturing. In the case of railroads it consists of a voluntary agreement between the companies and their working forces. There is no law specifically relating to the matter. The arrangement was made by the labor department of the board of trade and is conducted under its auspices. Its official sanction, so far as legislation is concerned, arises from the general conciliation act of 1896. In 1907 an agreement between the railroads of Great Britain and their employees was put into effect which provided that grievances should be adjusted by conciliation boards constituted according to occupations of employees and equally representative of both sides of a dispute. In the event of disagreement, unsettled points should be referred to a general board of arbitration. The procedure under this arrangement was found to be subject to vexatious and irritating delays. The precedent was gradually established of not seriously attempting to adjust grievances before the sectional conciliation boards, but to pass them on to the arbitration board. The excessive delays which thus occurred aroused intense dissatisfaction among employees, which finally culminated in the general strike of 1911, the appointment of a royal commission to investigate the situation, and the final acceptance of an agreement under the provisions of which the general arbitration board was abolished and reliance placed for final decision upon conciliation boards. Since the adoption of this principle no strikes of any consequence have been declared on the railways of Great Britain. The principle of voluntary conciliation has been firmly established by five years' experience under this arrangement.

#### CONSTRUCTIVE ANALYSIS.

From the preceding analysis of legislation and its operation it has been seen that in general, five methods of strike prevention have been followed by the leading countries of the world, which may be taken as a basis for framing legislation for the United States.

1. *Absolute coercion by military force.*—This method of strike prevention is obviously impossible of application under existing American institutions.

2. *Legal coercion through compulsory arbitration.*—This method would also seem to be impracticable of adoption in the United States. Furthermore, it has not proved effective in preventing strikes in the countries where it has been tested. The successful operation of compulsory arbitration presupposes the existence on the part of employers and employees of a degree of adherence to industrial constitutionalism which has not been attained. Compulsory adjustment of industrial disputes could undoubtedly be made effective in this country by legal requirements as to the registration or incorporation of the organizations of the railroad employees, and an authorization to levy upon the funds of the unions and to imprison labor officials in the event of an illegal strike. It is clear, however, that compulsory adjustment of controversies by judicial proceedings should come gradually, as a result of a slow, evolutionary process, when the minds of the employees and employers had been gradually educated to it. Under these conditions—and it is undoubtedly the industrial ideal which should be constantly held in mind—compulsory arbitration would be a success. In the light of the present attitude of labor and capital toward the adjustment of industrial disputes, it is evident that the present is not the time to attempt to enter into compulsory arbitration. It is a matter for the future; not the present.

3. Another idea which has been put forward as a means of settling disputes is based on experience in Germany, Austria, Belgium, and Holland. It is the suggestion that the contractual relation between employers and employees be so modified as to provide that employees would, upon entering the railway service, voluntarily give up the right to strike, or give up the right to concerted action to enforce wage and other demands. This recommendation also carries with it the presumption of adequate machinery for ventilating the grievances of employees in a speedy and fair way.

This idea could be put into operation in the future, or, in other words, such a modification of the contract between the railroads and their employees might be made in the future. It could not practically be put into operation by a legislative enactment at the present time. What is a more fundamental defect in the suggestion, however, is that it neglects the basic fact that industrial peace and economic justice might be finally secured through the education of employers and employees to an attitude of greater confidence in each other's probity, and to the realization that the largest measure of economic fairness in the distribution of the output of industry is to be obtained by submitting controversial matters in orderly adjustment and judicial decision. It would be better to reach this end by having it worked out between employers and employees than by having it imposed by legislative enactment at the present time.

4. Another suggestion which has been put forward by certain statesmen and publicists, prominent railroad officials, and the United States Chamber of Commerce is that rates of pay of railroad employees and a minimum wage be fixed by the Interstate Commerce Commission. This involves the same principle of governmental interference which is embodied in the Australasian legislation. It assumes minute governmental regulation—the establishment of standards as to wages, hours, and living—the administrative fixing of wages and conditions of employment.

One of the main arguments put forth in support of this method of regulation is that, in view of the fact that the Interstate Commerce Commission controls railroad rates, it should also regulate wages, so that rates and wages might be correlated. As a matter of fact, there is no need of any such correlation, and it would be without value. The factor to consider so far as the relation of wages to rates is concerned, is labor costs of operating railroads. This is now being done by the Interstate Commerce Commission, and it has ample data in the form of the sworn reports of the railroads which are annually filed with the commission.

5. The last, and most practical suggestion, is based upon the experience which has already been had in the adjustment of wage and other controversies through voluntary conciliation and arbitration. Conciliation has been found to have been the most important factor in settling controversies. This has been the experience of Great Britain, Canada, and the United States.

The real strength of the Canadian law lies, as has already been pointed out, in the opportunity afforded to the boards of investigation of mediating points in disputes. In the United States mediation has been and still is the principal method of maintaining peaceable working relations between railroad officials and employees. Controversies which arise on one railroad or a small group of railroads are usually successfully mediated or, where mediation fails, they are adjusted by arbitration on the basis of an agreement obtained through mediation. This has also been the experience of past years. No difficulty was experienced in mediating disputes until about six years ago, when what has become known among railroad employees as "concerted movements" by geographical areas came into play. These movements started originally in one operating section with one group of employees, then passed into concerted action by larger groups as train and engine crews, and finally developed during the present year

into a Nation-wide movement for an eight-hour day by all classes of transportation employees. By its very nature a concerted movement is almost impossible of mediation.

The variations in wage schedules and the operating conditions of the railroads are too great. The earlier movements were after extended conferences adjusted by arbitration. Along with this means of settlement developed the precedent of finally appealing to the President to settle the question as to whether or not arbitration should be had. This procedure was largely the outcome of dissatisfaction of both parties with the results of arbitration procedure. Neither side claimed to be satisfied. With this tendency also went a growing radicalism among the members of the railway brotherhoods which practically expressed itself in the creation of large committees to take part in the negotiations with the officials. The establishment of such clumsy and awkward machinery, usually under radical influence, practically rendered the mediation of concerted movements impossible.

Mr. CHAMBERS. With reference to the report of the board on "Railway Strikes and Lockouts," will you permit me the opportunity of saying, Mr. Chairman, that the board had 500 copies printed and that they can be had by interested parties on application. And will the committee pardon the suggestion that it might be well to have it printed as a public document.

The CHAIRMAN. If no one else desires to be heard at this time, the committee will now adjourn.

(Thereupon, at 12 o'clock m., the committee adjourned to meet on Thursday, January 4, 1917, at 10 o'clock a. m.)



# GOVERNMENT INVESTIGATION OF RAILWAY DISPUTES.

THURSDAY, JANUARY 4, 1917.

UNITED STATES SENATE,  
COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The committee met at 10 o'clock a. m. at room 326, Senate Office Building, Senator Francis G. Newlands (chairman) presiding.

The CHAIRMAN. The committee will come to order. I will first inquire whether there is any representative of the brotherhoods or labor organizations who have not as yet announced their desire to be heard?

Mr. H. E. WILLS (assistant grand chief engineer, Brotherhood of Locomotive Engineers). Mr. Chairman, possibly to-morrow, if we can have a few minutes, we will be glad to utilize the time.

The CHAIRMAN. I wish to say that as yet they have not been heard, and we are ready to hear any one of them at any time. Mr. Furuseth, would you like to say anything?

Mr. FURUSETH. Later on, Mr. Chairman. I would like to hear what Mr. Emery has to say.

The CHAIRMAN. Very well, we will now hear Mr. Emery.

## STATEMENT OF MR. JAMES A. EMERY, ATTORNEY AT LAW, WASHINGTON, D. C.

Mr. EMERY. Mr. Chairman and gentlemen of the committee, I appear on behalf of the National Association of Manufacturers, the National Founders' Association, the National Metal Trades' Association, and the National Erectors' Association. The first three associations are composed of about 5,500 manufacturing organizations, producing every variety of commodity in perhaps 25 States of the Union. The National Erectors' Association is composed of makers and erectors of structural steel. These associations give steady employment, in the aggregate, to approximately three to three and a quarter millions of men. Their interest in the proposal pending before the committee is primarily that of shippers and manufacturers who are utterly dependent for the continued operation of their plants upon an uninterrupted flow of the raw material of production and the movement of finished product from their plants to its market. Needless to say, their continued capacity to employ is equally dependent upon their ability to receive raw material and distribute the finished product.

Several years ago an inquiry made among the membership of the National Association of Manufacturers, and many nonmembers, disclosed that substantially 90 per cent of everything produced by the



manufacturer was consumed outside of the State of production. I can not say with equal certainty what percentage of "raw material" is produced outside of the State in which it is manufactured. "Raw material" is, of course, a term of varied meaning, for that which is the "raw material" for one plant is the finished product for another. Taking this fact into consideration, I believe it approximately correct to say that something like 90 per cent of "raw material" is obtained through the channels of domestic or foreign commerce from outside the State in which it is transformed into a new commodity. I call attention to this condition, Mr. Chairman, to illustrate the utter dependence of continuous industrial production upon the maintenance of uninterrupted intercourse with every source of production and distribution.

I beg also to say, Mr. Chairman, that those whom I represent are organizations who realize to the utmost the value and importance of associated effort. That, indeed, the world in which we live maintains all its great powers of production, transformation, and distribution only through organized cooperation, supervision, and direction. No one is more interested than these organizations and their employees in protecting the right of association, within proper limitations, against undue interference by the State. They desire to its fullest limits the right of free association, subject only to the paramount right of the individual, and the public interest to be protected against the misuse of the power of organization.

I beg to suggest as a further preliminary that the proposal to regulate combinations in interstate commerce be considered from the standpoint of prospective as well as actual associations. The manifest tendency of combinations should be held in mind, and the possibility of new forms, as well as those of which we are presently familiar through history and judicial decisions. We must consider the capacity of combination for evil as well as good in the light of the life we now live, and I refer not less to combinations of employers than of employees.

In order that I may address myself with definiteness to the proposal pending before the committee, and particularly that I may make distinctions which in this discussion I regard as essential, I beg to insert in the record at this point the recommendations of the President, as stated to Congress in his message of August 28, 1916, and reiterated, emphasized, and amplified in his subsequent message of December 5, 1916.

In the first message the President suggested:

Fifth, an amendment of the existing Federal statute which provides for the mediation, conciliation, and arbitration of such controversies as the present by adding to it a provision that in case the methods of accommodation now provide for should fail, a full public investigation of the merits of every such dispute shall be instituted and completed before a strike or lockout may lawfully be attempted.

In his message of December 5 he amplifies this recommendation as follows:

I would hesitate to recommend, and I dare say the Congress would hesitate to act upon the suggestion should I make it, that any man in my occupation should be obliged by law to continue in an employment which he desired to leave. To pass a law which forbade or prevented the individual workman to leave his work before receiving the approval of society in doing so would be to adopt a new principle into our jurisprudence which, I take it for granted, we

are not prepared to introduce. But the proposal that the operation of the railways of the country shall not be stopped or interrupted by the concerted action of organized bodies of men until a public investigation shall have been instituted which shall make the whole question at issue plain for the judgment of the opinion of the Nation is not to propose any such principle. It is based upon the very different principle that the concerted action of powerful bodies of men shall not be permitted to stop the industrial processes of the Nation, at any rate before the Nation shall have had an opportunity to acquaint itself with the merits of the case as between employee and employer, time to form its opinion upon an impartial statement of the merits, and opportunity to consider all practicable means of conciliation or arbitration. I can see nothing in that proposition but the justifiable safeguarding by society of the necessary processes of its very life. There is nothing arbitrary or unjust in it unless it be arbitrarily and unjustly done. It can and should be done with a full and scrupulous regard for the interests and liberties of all concerned as well as for the permanent interests of society itself.

It is to the principles of this proposal alone that I desire to address my remarks. I understand this proposal to be pending before this committee in tentative form, together with a measure introduced by the distinguished Senator from Alabama (Mr. Underwood), which proposes to confer upon the Interstate Commerce Commission the power to fix the wages and hours of labor of employees engaged in the operation of interstate trains.

The President's recommendation, as we understand it, is that of an extraordinary remedy for an extraordinary situation. He proposes that in the event a labor dispute between the managers and operatives of an interstate carrier by rail threatens the interruption of the mails, or the performance of the military or civil functions of the Federal Government, or the free flow of commerce between the States, and mediation or conciliation shall have failed and arbitration shall have been rejected, Congress shall provide for the appointment of a commission, clothed with full investigative authority, to inquire into and report upon the merits of the dispute; and, pending the conclusion of that inquiry and the submission of the report thereon, it shall be unlawful for the managers of said carrier to lock out its employees or for said employees to combine to strike.

In part the proposal is not new. The first instance of an effort to focus an intelligently formed public opinion upon a controversy of this character was found in a proposal submitted by Mr. Charles Francis Adams to a meeting of the Civic Federation shortly after the submission of the final report of the Anthracite Coal Strike Commission of 1902. That proposal, however, did not contain the further suggestion embodied here—that a strike or lockout should be penalized until the public investigation should have been completed.

Senator BRANDEGEE. Would it interrupt you if I should ask you a question right there?

Mr. EMERY. Not at all.

Senator BRANDEGEE. To your mind, does it make any difference whether the combination which you want to have conditioned is a combination for the purpose of interrupting the flow of commerce or for the purpose of improving their condition, the simple effect being to interrupt the flow of commerce?

Mr. EMERY. It makes all the difference in the world, and it is to that distinction I shall especially address myself in just a moment.

Senator BRANDEGEE. Very well.

Mr. EMERY. As I understand the President's proposal, it is an attempt to focus upon a stubborn controversy, threatening a serious

interruption of intercourse, the full force of public opinion to be accurately formed through a public inquiry, under circumstances which fix public attention upon its investigations because of the character and eminent qualification of the commission of inquiry. That, substantially, was the purpose and effect of the appointment of the Anthracite Coal Strike Commission by Mr. Roosevelt, a voluntary body unauthorized by law, but appointed by the President of the United States, with the consent and approval of the parties to the coal strike.

If the appointment of such a commission as the President proposes be considered from the standpoint of the power of Congress to make inquiries preparatory to legislating upon any given subject, it requires no vindication here, for your power to investigate for the purpose of securing information upon which legislation is to be predicated is as broad as the legislation itself.

There seem to be involved in the President's recommendations two broad questions, one of power, the other of policy. Does Congress possess the authority to do that which he proposes, and is it expedient to do it?

Addressing myself to the first consideration, I believe it will clarify the discussion if we consider, not merely the power of Congress to deal with the particular combinations to which the proposed legislation would be addressed—the strike or lockout—but the general rule as to the nature and control of combination itself, since the strike is merely one kind of a combination. While it has been intimated in this discussion, I can not believe that the members of the committee will conclude that the strike stands in the category of combination by itself with special rights and privileges differing from any other form of combination, for I shall submit that the legality or illegality, criminality or innocence of the combination to strike is to be determined by a standard of principles which is equally applicable to all forms of combination.

It should furthermore be emphasized, Mr. Chairman, that there is nothing in the President's proposal that interferes in the slightest with the right of any individual to quit whenever that individual desires to sever his relation with the employing carrier. This proposal involves only the power to control, regulate, or condition the right to combine to quit, a matter essentially different from the right of the individual to quit. This fundamental distinction has been observed throughout the entire course of common and statutory law since the beginning of English institutions. In our own country the distinction between the acts of individuals and that of combinations and conspiracies has been recognized from our earliest cases, and, in its application to the employment relation and the disputes which grow out of it, has been constantly considered, distinguished, and interpreted, as, for instance, the case of the Commonwealth *v.* Hunt, Fourth Metcalf, 75 years ago, even to the last adjudication of the circuit court of appeals in the eighth circuit in the very recent case of Dowd *v.* The United Brotherhood of Mine Workers, a most important decision under the Sherman Act.

A combination, Mr. Chairman, is any cooperative effort between two or more persons for the accomplishment of a given object. Combination is the generic term of which conspiracy is the illegal species. A combination is good or bad, lawful or unlawful, innocent or crimi-

nal, not because of its magnitude or the personnel of those who compose it but but because of the motive or object which the combination undertakes to accomplish or the methods which it employs. This standard is, I think, of universal acceptance. I submit it is, furthermore, equally true that the right to act in combination is subordinate to individual rights of action, and that in any collision between the right of the individual and the right of a combination, other things equal, it is the duty and has been the general policy of the law and of government to protect the individual against the superior power which combination gives.

In the case of *Gompers v. Buck Stove & Range Co.*, in Two hundred and twenty-first United States, Mr. Justice Lamar pointed out, with singular force and clarity, that as the result of the growth of combination in a society like ours that one man, acting within his right, might be opposed by many in combination undertaking to compel him to do something which he did not desire, and had a lawful right, not to do. In such an event he must do one of two things—surrender to the will of the combination or appeal to authority to protect him against the exactions of the combination, and the court remarked that it was as much the public duty to protect the one against the many as it was to protect the many against the one. Needless to say, what is said of the duty of the court applies equally to that of the legislature, not only in the protection of the individual but the paramount public interest in any collision between it and the operation of the combination. And is this not especially true of the National Legislature, to which has been committed the exclusive and plenary national power to protect the most essential avenue of intercourse—the flow of commerce between the States?

For 26 years Congress has enacted and amended, and our highest courts have been engaged in interpreting, the regulation and prohibition of different kinds of combinations in interstate commerce. Thousands of pages of argument and decision have vindicated the right and duty of congressional authority to distinguish the operations of combinations from those of individuals, and to condition or exclude many forms of combination from interstate commerce.

I could read to the committee at length many examples, certainly over a period of three centuries, between the acts of individuals and those of combinations, and the early recognition, far back in the common law and proceeding to this hour, that many things are unlawful, or may be made unlawful and criminal, when done by a combination, which are not unlawful when done by an individual. The most common illustration is that a threat made by an individual is not, generally speaking, an unlawful act. Some overt step is usually required before the threat assumes a shape which the law will notice. On the other hand, a threat made by a combination is illegal without any step being taken to execute it. For the law considers that the very making of a threat by a combination carries with it, from the very nature of the confederacy, a menace not found in the weaker utterance of the individual. These distinctions, founded in common law and common sense, rest upon very clear fundamental differences between the combination and the individual. Combination is not a mere aggregate of individuals but, practically speaking, is a new personality. For the subordination of individual judgment and action to the purpose of the combination not only

gives to it an aggregate power of execution for good or evil that no mere aggregate of individuals possess in themselves, but these circumstances are also a limitation upon the liberty of every individual entering into the combination. Many have thus stripped themselves of their individual liberty to increase their power to effectuate a common purpose.

Through the Sherman Act, the Clayton Act, the Trade Commission act, the Federal Criminal Code, Congress has not only regulated and conditioned the activity of many combinations, but prohibited and excluded many more in interstate commerce. Some it has made criminals, others outlaws whose activities were penalized with triple damages. Still other combinations, through civil and criminal proceedings in the courts, have had their activities greatly modified and some forbidden. Indeed, under the antitrust act, making unlawful or criminal every combination's agreement or conspiracy to unduly restrain interstate trade, you have made it a penal offense for two railway clerks representing carriers to agree upon a rate (the Joint Traffic cases), for two butchers to agree upon the price of meat (the Beef Trust cases), or for two expressmen to agree not to compete for the carriage of a package from this District into an adjoining State. You have even denied, in the Northern Securities cases, the right of a State to create a legal corporation for the purpose of pooling the stock of two interstate carriers, for by such device, legal in itself, they undertake to overcome the will of Congress. Throughout the whole domain of combinations operating in commerce, 170 cases prosecuted by the United States between 1890 and 1914, under the terms of the Sherman Act, assail and in many instances punish, prohibit, or modify the right of combination, so that the proposal to condition the right of combination in interstate commerce contains nothing of novelty but is supported by ample precedent.

So much with respect to the general nature of the proposal. Let me now turn to the particular type of combination which is here to be considered. Let me again repeat, Mr. Chairman, the only authoritative standard by which we can measure the legality or illegality of any combination in its operations or combinations is not its magnitude or its personnel. Whether it be a combination of employers or of employees, or, in that ambiguous popular phrase, one of capital or of labor, it is the motive of combination and the methods which it employs which makes it lawful or unlawful. I realize that, in spite of the standards which I assert, distinctions are made between combinations of capital and labor combinations, and I venture to suggest with all deference, that such distinctions are neither logical nor legal, but political. To illustrate, the law permits labor combinations to fix wages while business combinations are forbidden to fix prices. In the domain of interstate commerce this distinction is sustained, because it is alleged that the one is directly and the other but indirectly related to commerce, although it might be pointed out that the historical development of the regulation of combinations shows very clearly that the inhibitions of the common law and the developments of public policy forbid the fixing of prices because of the power which was thus forbade combinations to fix prices, because of the power which such combination thus obtained to unduly enhance prices to the consuming public. In the light of experience we can

clearly see that the labor combination has the right to arbitrarily fix wages may, and does, equally enhance the cost of commodities into the price of which such labor necessarily enters.

It is also true that monopoly is forbidden to the individual or business combination, while the labor combination is permitted to endeavor to monopolize employment for its members. Furthermore, while competition between business combinations or individual business men is compelled, combinations to suppress competition between the individual members of labor organizations are not merely tolerated but approved. I point to these difference, Mr. Chairman, to suggest the practical evolution taking place in the legislative treatment of combinations, because I believe it reinforces the suggestion that the distinctions are not founded in logic or law but are political.

It seems necessary to dwell only momentarily on the obvious power with combinations, such as are the subject of the President's recommendation, possess to prevent intercourse between the States; and the interstate-commerce power was, of course, conferred for no other reason but to give national control and protection to commerce between the States and efficiently secure the freedom of trade and of the trader. As was said in *Gilman v. Philadelphia*, "Wherever commerce goes there the power of Government follows it to give protection under every circumstance." Now, the necessity of assuring the uninterrupted movement of the instrumentalities of commerce arises from the existing and constantly increasing specialization of industry and labor, which has made each portion of the community proceed to its work in utter dependence upon the assumption that the continued operation of every other form of operation is assured, and that common communication in every form will remain uninterrupted.

Just a few days ago the public press noted the fact that the Ford automobile establishment had closed for a week, because the congestion of freight was so great as to make it impossible to secure cars for shipment, and it was estimated that this resulted in a loss to the employees of substantially \$1,400,000.

The Anthracite Coal Commission, in its final report, gave a striking illustration of a loss resulting from the suspension of a single industry. They reported that the strike occasioned a decreased output of coal, causing a loss of some \$46,000,000 to the operators, some \$26,000,000 in wages to the strikers, and some \$28,000,000 in lost freight to the carriers. The indirect loss of many industries and their employees, due to an inability to secure fuel and a consequent stoppage of production and employment, was incalculable. It would be equally impossible to compute with even approximate accuracy the loss directly and indirectly attendant upon the interruption of some 27 railroads consequent upon the great Debs strike of 1894. In connection with that great disturbance it may interest the committee and in connection with the pending proposals to examine a remarkable lecture delivered by Mr. Cleveland in 1900, as one of the Stafford Little Lectures, in which Mr. Cleveland discusses the attitude and action of the Federal Government in meeting that emergency.

We have now become, Mr. Chairman, as completely dependent—indeed, if anything more dependent—upon the uninterrupted flow

of commerce over our artificial highways as we were at an earlier period of our history upon the movement of shipping over natural highways. Indeed, our great inland communities are often far from water transportation and utterly dependent upon the railway link between themselves and rivers or lakes or the sea. So it is not only the right but the duty of Congress to protect the flow of commerce against interruption by combination, by rail not less than by water or road.

Now, the interruption of service of rail, which the President's proposal contemplates, is one which has been and may at any time be brought about by the concerted action of the employees of the carrier that undertakes to suspend its operation until some demand which they make upon its managers is complied with. If the members of the committee believe that there is in the nature of such a combination a difference which justifies these measures by any other standard of combination than that which I have presented to their attention, I beg now to call their attention to what the courts have said in applying the principles of common or statutory law to the actions of strike combinations.

Now, what is a "strike"? It is a combination to secure the concerted and simultaneous withdrawal from employment of employees for the purpose of impressing some demand upon their common employer. It is invariably accompanied by a second activity which is an essential element of its success, a concerted effort to persuade others from taking their places. I believe the second element is quite as important in the definition of the strike as the first, for I know of no strike that is not accompanied and, indeed, the success of which does not depend upon the second element; that is, to persuade others from taking the places of those who have concertedly withdrawn from their positions.

Now there is in that definition no suggestion of illegality. To dissuade others from taking the place which the strikers abandoned is perfectly legitimate when confined within the bounds of lawful persuasion, but every combination to concertedly quit employment is by reason and authority not a legal combination. Every strike is not a lawful strike. It is to be measured by the same standard by which you determine the propriety of any other act of a combination—the motive or object of the strike and the means which the strikers employ. For the moment I prescind from the methods employed, because, evidently, strikes which are otherwise lawful may be made unlawful by the methods of the strikers. Intimidation, coercion, or violence directed against those who desire to take the places of the strikers as a means of preventing the free flow of labor desirous of entering contractual relations with the employers may in themselves render an otherwise legitimate strike unlawful. For the moment let me confine myself solely to the question of the legality or illegality of simultaneously and concertedly withdrawing from a common employment for the purpose of enforcing some demand upon the employer. Directing my attention to that combination alone apart from any circumstances of its operation, I say that reason and the great body of authority equally demonstrate that when the combination quits for the purpose of securing some condition of employ-

ment which is directly and substantially related to the welfare of the strikers it is a legal combination, but when, for instance, the strike is a sympathetic one, not for the purpose of directly benefiting the condition of those who quit, but for the purpose of aiding others not in the employment of the strikers' employer or for any other object than the one which I have stated, the legality of the strike is in question.

The Debs strike is a practical illustration of this principle. The strike of the railway union in the Debs case was not because of a disagreement between the managers of the 27 railroads affected and the strikers, but because the American Railway Union undertook to assist the employees of the Pullman Palace Car Co., who were on a strike against their employers. The purpose of the strike of the American Railway Union was to compel the railroads to abandon existing contractual relations between them and the Pullman company, and to refuse to haul their cars until the Pullman company had settled its differences with its striking employees.

The combination to strike for this purpose was, evidently, unlawful from the beginning. So, in further illustration of the limitations upon the combination to strike, let me point out the effect of the many illustrative cases which vindicate the principle.

Thus it is said in *Pickett v. Walsh* (192 Mass., 572): "In our opinion organized labor's right of coercion and compulsion is limited to strikes on persons with whom the organization has a trade dispute."

So the court says in *State v. Stockford* (77 Conn., 227): "The strike may be lawful or may be illegal and criminal."

To the same effect the *State v. Glidden* (55 Conn., ? ? ?):

See also to the same effect *Reynolds v. Davis* (198 Mass., 294); *L. D. Wilcott Sons Co. v. Driscoll* (200 Mass., 100).

The CHAIRMAN. Can you not hand those citations to the reporter for insertion in the record?

Mr. EMERY. I will give them to the reporter, Mr. Chairman. I put them in to supply a number of instances applying the principle at issue:

*Barr v. Essex Trades Council* (53 N. J. Equity, 101).  
*Karges Furniture Co. v. Amalgamated Wood Workers Local Union* (165 Ind., 421).

*Erdman v. Mitchell* (207 Pa. State, 79).

*Curran v. Galen* (152 N. Y., 33).

*Gray v. Building Trades Council* (91 Minn., 171).

*Lohse Patent Door Co. v. Fuelle* (114 S. W., 997).

*Moores v. Bricklayers' Union* (7 Ry. & Corp., L. J., 108).

*George Jonas Glass Co. v. Glass Bottle Blowers Association* (66 Atl., 953).

*My Maryland Lodge v. Adt.* (100 Md., 238).

*Beck v. Railway Teamsters' Protective Union* (118 Mich., 147).

*Beattie v. Callenan* (81 N. Y. Supps., 413).

Now, the purpose of a strike combination is always to inflict damage, even when the strike itself is legitimate. In such a case the injury is the natural result of the exercise of legitimate activity by the strikers. It is therefore "damnum absque injuria," as when one competitor legitimately takes trade from another. Whoever gets it, the other is deprived of trade to that extent, but such injury is incidental to the clash of legitimate right.



But the Supreme Court has laid down the fundamental principles of tort rule in *Aiken v. Wisconsin* (195 U. S., 204) :

It has been considered at prima facie intentional infliction of temporal damage is a cause of action which as a matter of substantive law, whatever may be the form of pleading, requires a justification if the defendant is to escape.

Now, the justification of injury in a railroad or other strike is that it is the purpose of a combination to benefit its own members by increasing their wages, shortening their hours, or improving their conditions of employment. So where that is the purpose of the combination no court questions the legality of the strike.

But, needless to say, strikes have been and are and undoubtedly will continue to be called for purposes other than the advancement of the interest of their members. Perhaps to assist others not related to their employer, or to control their employer in some act of management, or perhaps to compel him to refrain from dealing with some one with whom the strikers are at odds. The last is a boycott rather than a strike. The object of a strike is to isolate the employer from intercourse with prospective employees while the purpose of a boycott is to isolate him from intercourse with actual or prospective customers. In applying the principles which I have amplified, the Federal courts have had many occasions to consider strikes affecting the operation of interstate carriers and to meet the contention that "all strikes are legitimate," especially to point out many forms of strikes among employees of carriers which are not legitimate and therefore directly bear upon the proposals of the pending measure. I beg to call your attention to the following combinations to strike against interstate carriers, some of which have been held to be illegal, others of which have been held to be criminal conspiracies :

1. A combination which has as its object or as one of its means contemplates interference with or the interruption or obstruction of the United States mail, is a conspiracy.

2. A combination of railroad managers to discharge or procure the discharge of employees and thereby prevent the operation of a mail or other interstate train in order to enlist public sympathy is a conspiracy. (*U. S. v. Debs*, 63 Fed., 436.)

I call the attention of the committee to this second kind of the combination because it illustrates the application of the principle at issue to the managers of railroads as well as their employees. The Federal grand jury in Chicago in June, 1894, was investigating the great railway strike then pending, and Circuit Judge Grosscup charged it as follows:

It is stated in print that some of our fellow citizens believe that the interruption of the mails and of interstate commerce, into which you are inquiring, was the result of a conspiracy on the part of men higher in the railroads than the employees. If two or more men, no matter what their position in the railroad company, may have been wrongfully and corruptly organizing themselves either for the purpose of creating public sympathy in a threatened strike or for any other purpose, that they would cause the mail trains and trains carrying interstate commerce to be stopped, and did act in pursuance of that agreement, they are guilty of conspiracy. If two or more men agree wrongfully and corruptly among themselves that for the purpose of creating public sympathy in this strike they would discharge men from their employ who otherwise would not have been discharged, intending that such discharge should stop the running of the mail or interstate commerce trains and thereby raise public indignation, they would be guilty of conspiracy. If two or more men, in view of a threatened strike, agree wrongfully or corruptly that they would not employ men to take the places of the men who have quitted the

service, but would allow the trains to stand still for the sake merely of creating public sympathy and indignation against the strikers, they would be guilty of conspiracy unless the circumstances and situation were such that the employment of new men reasonably viewed would lead to danger to those men, or danger to the railroad property, or danger to any public interest.

A combination to cause a strike of those carrying the mails or of the roads carrying the mails, or to prevent others, by threats or violence, from taking the places of those striking for such a purpose, is a conspiracy. (Including any combination the purpose of which or one of the methods of which is physical interference with any person or thing in transit or any vehicle of interstate transfer or communication.) A combination to induce or compel the officers or the receiver of an interstate railroad company to refuse to afford equal facilities to the cars of another interstate carrier for the purpose of coercing such carrier is a conspiracy. (*T. A. A. & N. M. R. R. Co. v. Pa. R. R.*, 54 Fed., 730.)

The case of the *Toledo & Ann Arbor v. The Pennsylvania Railway Co.* was one in which the locomotive engineers of the Ann Arbor Road, having a disagreement with the management of that carrier, struck, and, under a rule of the brotherhood, locomotive engineers on the connecting roads, while engaged in no controversy with the management of their respective roads, refused to handle any car of a road with which their members were engaged in a controversy. The engineers of the Pennsylvania Co. threatened to refuse the cars of the Toledo & Ann Arbor and an injunction was obtained by the latter road, and on a hearing upon it ex-President Taft, then the circuit judge, held that the rule of the brotherhood, enforced by the threat and action of the members, made them a conspiracy to compel the connecting road to violate the statutes of the United States which required them to afford equal facilities to every connecting carrier.

A combination of railroad employees to compel a breach of contract with one with whom the strikers are at odds, by threatening a strike against the carrier, unless he breach his contract, or a combination to create dissatisfaction between the carrier and its employees for the purpose of causing a strike to paralyze transportation, is a conspiracy. (*Thomas v. Cincinnati*, 62 Fed., 803.)

A combination of railroad employees to procure an employee or a body of employees to quit the service of a carrier in violation of a contract of service is unlawful.

A combination of employees of a carrier with the object and intent of not merely quitting the service of a carrier but of crippling its operation is unlawful. (*Arthur v. Oakes*, 63 Fed., 310.)

In support of these propositions and in further illustration of the principle under discussion I submit the following Federal cases:

- Arthur v. Oakes* (63 Fed., 327).
- Thomas v. Cincinnati, N. O. & T. P. R. R. Co.* (62 Fed., 803).
- Hopkins v. Oxley Stave Co.* (83 Fed., 912).
- Toledo A. A. & N. M. R. R. v. Penn. Co.* (54 Fed., 730).
- U. S. v. Debs* (63 Fed., 436).
- U. S. v. Debs* (64 Fed., 724).
- U. S. v. Debs* (158 U. S., 564).
- U. S. v. Workmen's Amal. Council* (54 Fed., 85).
- In re Doolittle* (23 Fed., 544).
- In re Wabash R. R. Co.* (24 Fed., 217).
- U. S. v. Elliott* (62 Fed., 801).
- U. S. v. Elliott* (64 Fed., 27).

The committee will find no clearer case defining and distinguishing the right of combinations of railway employees to strike than is contained in the decision of *Arthur v. Oakes* (63 Fed., 310), a decision of the circuit court of appeals written by Mr. Justice Harlan.

It was a proceeding on an appeal seeking to modify an injunctive order issued to protect a receiver against a combination of strikers threatening to prevent the operation of the road in his charge.

The court modified the order made by the lower court, and in doing so made and sustained an essential difference which, while vindicating the principle that no man could be compelled to perform personal service by injunctions which would constitute involuntary servitude, asserted the difference between combined and individual action and declared the illegality of a combination to strike for the purpose of crippling the operation of a common carrier. The court said that—

It is one thing for a single individual, or for several individuals each acting on his own responsibility and not in cooperation with others, to form the purpose of inflicting actual injury upon the property or rights of others. It is quite a different thing in the eye of the law for many persons to combine or conspire together with the intent, not simply of asserting their rights or of accomplishing lawful ends by peaceful methods, but of employing their united energies to injure others or the public. An intent upon the part of a single person to injure the rights of others or of the public is not in itself a wrong of which the law will take cognizance, unless some injurious act be done in execution of the unlawful intent. But a combination of two or more persons with such intent, and under circumstances which give them, when so combined, a power to do an injury they would not possess as individuals acting singly, has always been recognized as in itself wrongful and illegal.

The court then proceeded:

The result of these views is that the court below should have eliminated from the writ of injunction the words "and from so quitting the service of the said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad." But different considerations must control in respect to the words in the same paragraph of the writ of injunction, "and from combining and conspiring to quit, with or without notice, the service of the said receivers, with the object and intent of crippling the property in their custody or embarrassing the operation of said railroad."

We have said that if employees were unwilling to remain in the service of receivers for the compensation prescribed for them by the revised schedules, it was the right of each one on that account to withdraw from such service. It was equally their right, without reference to the affect upon property or upon the operation of the road, to confer with each other upon the subject of proposed reduction in wages, and to withdraw in a body from the service of the receivers because of the proposed change. Indeed, the right as a body of employees affected by the proposed reduction of wages, to demand given rights of compensation as a condition of their remaining in the service was as absolute and perfect as was the right of receivers representing the aggregation of persons, creditors, and stockholders interested in the trust property, and the general public, to fix the rates they were willing to pay their respective employees. But that is a very different matter from a combination and conspiracy among employees, with the object and intent, not simply of quitting the service of the receivers because of the reduction of wages, but of crippling the property in their hands, and embarrassing the operation of the railroad.

The first proposition of Justice Harlan referred to the natural and inevitable result of the exercise of the right of quitting by employees, while the second had as its object the doing of an illegal injury by the combination which had no justification.

Senator UNDERWOOD. What decision is that?

Mr. EMERY. That is the case of Arthur v. Oakes.

Senator UNDERWOOD. In what court?

Mr. EMERY. In the Circuit Court of Appeals. The decision was written by Mr. Justice Harlan.

Senator UNDERWOOD. Was that modified afterwards?

Mr. EMERY. Never. Mr. Justice Harlan in that case modified the injunction which had been previously issued in the case of Farmers' Loan & Trust Co. *v.* Northern Pacific Railroad (60 Fed., 803). Possibly that is what Senator Underwood has in mind.

Senator BRANDEGEE. In what year was that decided?

Mr. EMERY. That decision was rendered October 1, 1894, and the rule laid down has been approved and followed by the Supreme Court ever since. It is especially interesting because of the clear distinction which the court makes between the right of the individual employee to quit service, and the right of combination for that purpose. Moreover, the court remarks—which is merely obiter—nevertheless suggestive, as Mr. Justice Harlan pointed out in a later case—that of *United States v. Adair* (208 U. S.), that the employee's right to quit was morally, and legally speaking, always modified by the circumstances of his employment. The man who quit his job in such a manner as to endanger life or risk the safety of passengers or freight was violating the natural obligations of his employment. In both cases the court referred to the right, which was obviously taken for granted, that Congress possessed, to condition the right to quit in such a manner as to protect the movement and safety of passengers or property on interstate carriers.

While I know of no case which presents the precise circumstances involved in the point at issue, it seems to me that the relation between the pending proposals and the inhibition of the thirteenth amendment, as well as the determination of the object which may be in the mind of the combination to quit, is illustrated in the case of *Ex Parte Lenon*, 166 U. S., 320.

Mr. Lenon was an engineer of the Pennsylvania Railroad at a time when the employees of the Toledo & Ann Arbor Road were engaged in a strike. An injunction had been issued on application of that road to secure it equal facilities from connecting carriers, and notice of the issuance of said injunction had been given in the usual way. Mr. Lenon was called upon to attach his engine to a car of the Toledo & Ann Arbor Road and refused to do so, saying, when specifically ordered to make the connection, "I quit." This, of course, he had a perfect right to do. It appeared from the record that he held his train on the siding from 10 o'clock in the morning until 2.30 o'clock in the afternoon when he received a telegram from the directing officer of railway brotherhood which said, "You may proceed and handle Ann Arbor cars." He then attached the car to his train and went on. He was cited for contempt, and the issue was whether he had quit his employment, which he had a right to do, or whether the circumstances indicated that he had not quit in good faith, but had made a pretense of doing so for the purpose and with the intent of evading the injunction and interfering with the operation of the Ann Arbor Road. The court held that the circumstances plainly demonstrated that his quitting was not in good faith, but was for the purpose of preventing the movement of the Ann Arbor car. Counsel pleaded that he could not be compelled to perform personal service by injunction and that the court's order placed him in a position of involuntary servitude, and those contentions were overruled and the contentions distinguished.

I submit that all these cases disprove, in the first place, that there is a "sacred right to strike," which stands by itself as a right of

combined action, which is not measured by those standards that have for many centuries determined the legality or illegality of all other combined acts. They illustrate, in the second place, that the strike may readily become an illegal or criminal conspiracy not merely by the method which the strikers may employ, but because of their purpose or motive. Furthermore, it becomes evident that Congress by long-standing legislation, as it has been determined by the courts, has declared many forms of strikes unlawful and excluded them from use by the employees of the interstate carrier because of their effect upon the movement of commerce.

Not only do the instances presented illustrate a few of many combinations which have been formally condemned by the courts, but many more could be suggested which would come equally within these inhibitions and are not only possible but probable. Suppose, for instance, existing brotherhoods, or any combination of railway employees, undertook to aid any other labor combination in preventing the shipment of goods of the manufacturer or merchants who had incurred their ill will or with whom they have an economic disagreement and the railway employees, in sympathy with their brother employees, undertook by a strike or the threat of a strike to prevent the handling of the cars containing the merchandise of the manufacturer or merchants with whom the combination was at issue. Is it not obvious that a strike for such a purpose would be not only unlawful but criminal under the interstate-commerce act requiring the employees as well as the officers of carriers to handle shipments without discrimination?

But, Mr. Chairman, the possibilities of combined action are innumerable and as combinations grow more powerful or more daring the possibility of the use of power to the public detriment and for individual injury continually increase. And this committee, as one composed of practical men, will, I presume, view these circumstances from the practical standpoint.

Now, in the light of these cases and in view of these very practical possibilities, of which we have had a very recent illustration, does Congress possess the power to say that a combination of employees of an interstate carrier to concertedly quit its employment for the purpose of preventing its operation shall be unlawful under certain conditions, or at all?

I should like to know, Mr. Chairman, to what part of the Declaration of Independence or to what part of the Constitution of the United States one can point that secures the same guaranties for action for combination that is assured to individuals? On the contrary this is a Government which, by its very nature, is dedicated to the protection and perpetuity of individual rights; to the protection of the individual not only against other individuals but against the agencies of government itself, and it is especially to protect the one against the many where, obviously, he is incapable of protecting himself.

In the domain of interstate commerce the policy of Congress in regulating and prohibiting combinations has been to protect the individuals against the misuse of the power of combination in that domain. The first purpose of Congress has been to protect the freedom of trade and of the trader against any obstructing authority

save its own. This was powerfully emphasized by Mr. Justice Brewer In re Debs (158 U. S., 540) when he said:

It is curious to note the fact that in the larger proportion of the cases in respect to Interstate Commerce brought to this court, the question presented involves the validity of State legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of the State to legislate in such a manner as to obstruct interstate commerce. If the State, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has the power which the State itself does not possess?

I submit that Congress possesses a power to condition action in combination that it could not exercise with respect to the individual since by its nature combination is subject to a different rule of law and policy. This Government was primarily conceived to protect individual rights and the public interest, and to Congress is given the exclusive and plenary power to protect that right and interest in intercourse between the States. Of course, no individual can exercise the right to strike, for it is a mere miscarriage of language to refer to quitting by one person as a strike, but even so far as the individual himself is concerned I think Congress could go very far in conditioning his right to quit the service of an interstate carrier and, needless to say, what could be said of the conditioning of individual action will apply in much greater degree to the conditioning of any action of combination. Is there any doubt in the mind of any member of this committee that Congress can condition the right to combine to quit the service of a carrier in order to protect the interruption of that essential service and not to protect the management but the public?

Of course, the right to prohibit the right to combine to quit for a time may include the right to prohibit the right to combine to quit altogether, although there would be a distinction involved in such a question as to the reasonable use of power as opposed to its arbitrary exercise, for arbitrary power finds no sanction in our institutions.

I think Congress could go very far in conditioning the individual contract of service for those engaged in the operation of an interstate carrier, and whatever may be said with respect to the power of Congress in that particular can surely be said for a greater reason with respect to the power of Congress to condition the exercise of the right of combined action among the operatives or managers of instrumentalities of interstate commerce. To illustrate, is there any doubt in the mind of any member of this committee that Congress, to insure the safety of passengers and freight moving by rail between the States, could make it a penal offense for an individual employee of such a carrier to quit within a certain limit of time or without due notice, if, by so quitting, he jeopardized the life of passengers or the safety of property committed to the custody of the carrier? Can you doubt that Congress could say to the towerman directing the movement of many trains over many tracks, or the switchman or engineer, upon the performance of whose duty the life of passengers depends, should not quit without some intervening notice or without taking his train to its destination, or, at least, without delivering it to a terminal? Do you doubt that as a regulation of commerce Congress could punish such quitting as a crime? Of

course it could not affirmatively force his service, but could it not compel by a penalty a reasonable respect for the circumstances of his employment? For every man who voluntarily undertakes employment with an interstate carrier, as manager or operative, possesses duties as well as rights. He can not escape the obligations which attach to his employment by its very nature. I have no doubt that the State, in the exercise of its police power, as Congress, in the exercise of its commerce power, could compel a reasonable recognition of the obligations of employment where sudden quitting endangered the life of persons who, by the circumstances of his job, depended for their safety upon the reasonable performance of some step in a task before the employee quit. The circumstances of all our social life make us each at times dependent for our safety upon the completion of some act by another, and we have all become utterly dependent upon the maintenance of that motion which constitutes commerce and upon which we are abjectly dependent for the transaction of the business of life.

Now, if Congress declared that the concerted quitting of employment by the operatives of an interstate carrier pending an investigation of a dispute between them and their employers was unlawful, what is the nature of the step which Congress has taken? It has in no way affected the right of the individual to sever the contract relation. It has not prohibited, but it has merely conditioned the right to combine to quit. I submit that every one of the many cases presented in the inferior and supreme courts of the United States vindicating the power of Congress under the Sherman Act to condition, qualify, and prohibit all right of combination in interstate commerce speaks with an emphatic voice in favor of the authority of Congress to condition a combination of employees to quit the service of interstate carriers as a means of securing some demand from their employers. Whether Congress conduct the inquiry for which it provided, through the Interstate Commerce Commission, or made it an added power of the Commissioners of Conciliation or Mediation, or provided in each case a separate commission of inquiry is merely a matter of policy or expediency. But, as to the power of Congress, certainly every case from *Gibbons v. Ogden* to the last utterance of the Supreme Court on the subject, and especially those numerous cases which arose during the railroad strike of 1894, state in the broadest terms the supreme plenary exclusive power of Congress to prevent or remove any obstruction to the movement of commerce, whether it be physical or economic, a mob, a sand bank, or a monopoly, a group of employers or a group of employees. Surely, if the regulation of a sovereign State is swept from the pathway of commerce, Congress, in the language of Justice Brewer, can prevent "any mere voluntary association" from paralyzing that commerce as a means of enforcing or bettering its contract of service.

In dealing with this very power you have recently gone so far as to say that Congress may say to the manufacturer in any State:

Unless you make your local contract of employment within certain inhibitions you shall not ship your product in interstate commerce, for in the protection of that commerce we shall exclude from it any commodity, however sound in itself, which has been produced under local conditions we believe affect public health or public morals.

Personally I can not doubt that you possess the power to either exclude or condition the right to combine in interstate commerce when the purpose and necessary effect or one of the methods of such combination contemplates the suspension, obstruction, or prevention of the operation of a necessary instrumentality of commerce. Whether you shall exercise that power to the limit by prohibiting combination or whether you shall partially exercise it by conditioning its activity is a matter for your discretion. But I have no doubt, Mr. Chairman, that you could not compel any individual to remain at work against his will, except for such reasonable period as was necessary to compel some task the quitting of which endangered life. In the exercise of that power, with respect of an individual, the sole question would be whether or not the regulation of individual liberty was a reasonable exercise of power in the protection of a legitimate public interest, and such an exercise of power would be easily distinguishable from any effort to compel involuntary servitude. All the "peonage" cases to which reference has been made here arose under statutes in which a man was involuntarily compelled to work out a debt, and in such cases the statute was so shaped as to involuntarily urge him into debt as well as to compel him to involuntarily work it out. The inhibition placed by the thirteenth amendment does not run against reasonable restraint of private conduct in the public interest, but forbids involuntary servitude, except as a punishment for crime.

The CHAIRMAN. Mr. Emery, you have exceeded your time limit. I presume whatever you would say further would be simply an elaboration of what you have stated, and you can put quotations of these decisions in the record, if you choose.

Mr. EMERY. Very well, Mr. Chairman.

The CHAIRMAN. Mr. Easley, it is necessary for you to go out of town to-day? I wish to give you the floor, Mr. Furuseth.

Mr. FURUSETH. I shall defer to Mr. Easley.

Senator CUMMINS. Before you proceed with Mr. Easley, I would like to say that if it is convenient to Mr. Emery, at some future time I may want to ask him a question or two. I do not want to arrest the proceedings now, because I know Mr. Easley wants to leave town.

Mr. EMERY. I will be glad to be here at any time you suggest.

Senator CUMMINS. It may be that I will want to get some further information from you.

Mr. EMERY. With your permission, then, Mr. Chairman, I shall briefly sum up. I have undertaken to suggest that the proposal of the President applies only to the right to act in combination and not to individual conduct. That it is an extraordinary remedy for an extraordinary situation, and proposes only that when a labor dispute between the employees and managers of an interstate carrier has failed of settlement through mediation and conciliation, and arbitration is refused, it shall be unlawful for either party to the controversy to strike or lockout until an inquiry has been made into the merits of the controversy through a commission authorized for that purpose. I submit that the effect of this proposal is to condition, not to prohibit, the right to combine to quit, and that the purpose for



which such power is exercised is one well within the powers of Congress, to prevent the use of the power of combination to obstruct or prevent the interruption of the service of an interstate carrier as a means of securing the enforcement or betterment of a contract of service.

I submit that it is the duty as well as within the power of Congress to protect the country against an interruption of interstate service, upon which its social life is utterly dependent, through the act of a combination. That in the course of 26 years of congressional legislation dealing with combinations operating in commerce between the States Congress has asserted and has been sustained in the right to condition, exclude, and penalize all forms of combination threatening the safety, the freedom, and the free flow of every form of commercial intercourse between the States.

I submit, finally, that Congress can suffer no division of its power to regulate commerce with any other authority, whether it be a sovereign State or an irresponsible voluntary association. Yet it is evident that when Debs undertook to prevent 27 railroads from hauling Pullman cars, or when the brotherhood in the Ann Arbor cases undertook to prevent the railroads upon which they were employed from handling the cars of a carrier with which their members were on strike, that these combinations undertook to fix the rule of interstate commerce for the objects of their attack. Had they succeeded in their effort, the commerce which they permitted would have been conducted under the law which they established and not the rule which Congress made. The issue here is not merely whether Congress can condition the operation of a combination the necessary effect and purpose of whose activity is the paralyzing of the service of an interstate carrier, but whether Congress, not merely as a matter of right but of duty, can tolerate the organization and maintenance of any combination which can at its will, as a first or as an ultimate argument for the acceptance of its demands, possesses the power and asserts the right to starve a Nation into becoming the unconscious partners to its demand by stopping the instrumentalities of social intercourse until that demand, whether just or unjust, is granted. The final issue is whether or not Congress possesses and should exercise the ultimate power of social self-defense in the domain of interstate commerce.

The CHAIRMAN. Mr. Easley, you may now proceed.

#### STATEMENT OF MR. RALPH M. EASLEY, CHAIRMAN OF THE EXECUTIVE COUNCIL OF THE NATIONAL CIVIC FEDERATION.

MR. EASLEY. Mr. Chairman and gentlemen of the committee, my name is Ralph M. Easley, chairman of the executive council of the National Civic Federation.

I am not appearing officially speaking, for the National Civic Federation. I will read just one paragraph at the close of my statement here which will explain that better. In what I am saying I am only voicing my own sentiments. The National Civic Federation has not officially passed upon the question, although in earlier days the officers of the organization, from Mr. Low down, were all opposed to either compulsory arbitration or compulsory investigation.

This statement, Mr. Chairman, was not prepared to read before

this committee, but as a part of an address I am to make next week in New York, but I am only dealing with the operation of the Canadian act as I find it in their own reports.

In the present controversy over the Canadian compulsory investigation act, which act Congress is considering as a means, to quote its advocates, for preventing a recurrence of a threatened railway tie-up in this country, there are several very important points generally overlooked.

First, and most important, it will not prevent a recurrence at all; it was not intended to prohibit strikes, and it does not prevent them in Canada. It is only intended to delay them until after a board has heard both sides of the issue and made a public recommendation. Then either side or both sides, which has happened in Canada time and again, can go ahead and fight it out. This fact can be easily ascertained by examining the recent report of the conciliation board of the labor department of Canada, which purports to give the history of every case that has come before the board since the enactment of the law growing out of disputes in the railway, municipal utility, and mining interests of Canada, and their employees, mining being classed as a public utility in the law.

However strongly one may feel that the paramountcy of the public right and interest in an uninterrupted service of public utilities should be maintained at all hazards, however strongly one may feel that the railway brotherhoods, in threatening to paralyze the traffic of the country, were wrong and deserve drastic legislative treatment, as it has been said, to teach them that the public has right as well as they, there is no use in fooling ourselves about "securing a prevention of a railroad strike" in this country by adopting the Canadian act. Personally, I feel that the railway brotherhoods should have accepted the proposals of the railway managers for arbitration, notwithstanding their great disappointments in previous arbitration, and notwithstanding the acknowledged serious defects inherent in all arbitration where the public representatives on the board have the deciding voice. Also, I believe in the paramountcy of the public interests; but that has no bearing on the question as to whether the Canadian compulsory investigation act is the vehicle through which the public voice can be made effective. It is not a question of sentiment, but a question of fact.

A proposition that might work well in Canada with its almost homogeneous population of 7,206,643 does not throw much light on what will work in a country of 100,000,000 population composed of over 40 nationalities. When we consider that Greater New York and vicinity has a larger population than the whole Dominion of Canada, comparing problems in Canada to those in the United States seems a little grotesque.

Parenthetically it might be recalled that some years ago we were flooded with wonderful ideas of the successful operation of the novel and so-called progressive legislation in New Zealand, and the Socialists, single taxers, and other radicals in the country started at once a movement to "New Zealandize" the United States. Well, these beautiful dreams, even in little New Zealand, which is only one-sixth as large as Canada, and whose population is even more homogeneous, there being only 823 aliens, have been smashed to

smithereens; and if there is any country more chaotic in its industrial situation than New Zealand, it is not on the latest maps available at this writing. Furthermore, a commission composed of employers, labor leaders, and publicists is now on its way to the United States to learn from us how to get out of their mess.

The official reports of the board of conciliation to the Labor Department of Canada on the operation of the compulsory-investigation act from its enactment, 1907 to 1916, although written by officials who are trying to make it seem as important and successful as possible, and which conceals a number of very important facts that the average reader would never discover, furnished enough information to dissipate all beliefs that an industrial Utopia has been developed by our numerically speaking little neighbor on the north.

In the whole nine years of its existence it dealt with disputes involving only 146,000 employees, and 32,000 of them, or nearly 22 per cent, struck in spite of the award, and in many instances in spite of the law itself, striking before making any application. Nothing in the record shows that any effort was made to inflict the penalties of the law upon them by fining or sending them to jail.

Much is made by advocates of a statement in the reports that out of 191 disputes there were only 20 strikes. An examination of the report referred to shows that that means very little. There are dozens of little "Jim Crow" strikes, running from 4 to 100 employees—63 cases to be exact—which would have been settled by any voluntary mediation board, but under the law the cumbersome and costly machinery of the National Government had to be invoked for the 4, the 6, and the 10 employee class as well as in cases of real consequence. There are 109 cases, with 250 employees and less; while the largest number in any one case involved was 8,000, and they struck.

As against that record, under the Newlands Mediation Act, which has no compulsory powers, out of 74 railway disputes 73 were settled by mediation or arbitration, and in several instances the employees numbered more than all the railroad, municipal utility, coal mines, and other employees dealt with by the Canadian board in the whole nine years of its existence.

The United States Department of Labor reports 300 cases, 275 of which were adjusted, this without any power whatever. Furthermore, the board being a Federal one, and most of the cases having to do with State industries, either side could have politely asked them to tend to their own business. But their services were gladly accepted.

There are twice as many disputes, involving five times as many employees, settled by voluntary boards in New York City every year, as in all the disputes under the Canadian compulsory investigation act during its life.

But let us examine a few of the strike cases that are referred to in the official Canadian report and see if we can find anything worth copying in the United States, for all the arguments for the adoption of this measure here are based upon a general feeling that its operation in Canada has been a phenomenal success and is the answer to the question: How can we, in the United States, insure ourselves against the danger of a paralysis of the traffic of the country.

In the Cumberland Railway & Coal Co. controversy, with its 1,700 employees, there were four disputes in one year, and in three of them the men refused the award and struck, while in a fifth dispute the next year they struck again.

In the city of Toronto, in a dispute between the electric workers and the city-owned electrical works, the award favored the men, but the city refused to comply, and the men struck.

In a dispute between the Grand Trunk Railroad and its machinists the board unanimously found in favor of the men, but the road refused to comply, and the men struck.

The Michigan Central Railroad proposed a reduction in pay in one class of service, whereupon the men struck without reference to the law, but no penalty was enforced against them.

Six thousand members of the United Mine Workers' Union struck against the Western Coal Operators' Association in defiance of the law. Afterwards they were persuaded to apply for a board, and an award was handed down that they did not like, so they struck again and tied up the mines for seven months.

In the Grand Trunk Railway dispute, with its 3,000—

The CHAIRMAN (interposing). Did these instances occur in Canada?

Mr. EASLEY. These cases are all in Canada. They are cited in this book [exhibiting]. These are only cases that come under the compulsory act. They have a voluntary act, but these are either railroads, public utilities, or coal mines.

Senator BRANDEGEE. What is the title of that blue book that cites those cases?

Mr. EASLEY. This is the ninth report of the registrar of the board of conciliation and investigation, of proceedings under the Industrial Disputes Investigation Act of 1907, for the fiscal year ending March 31, 1916, printed by order of Parliament.

The CHAIRMAN. Do you wish that inserted in the record?

Senator BRANDEGEE. Only the title.

Senator CUMMINS. We will want it in the record sooner or later.

Senator BRANDEGEE. The whole book?

Mr. EASLEY. I will leave the book with you.

The CHAIRMAN. Do you wish it to be printed?

Mr. EASLEY. I do not want the whole book printed.

Senator CUMMINS. The history of the only law of the kind in the world, I think, ought to go in the record.

The CHAIRMAN. Will you look it over, Senator Cummins, and let us know whether you consider it proper to go in the record?

Senator CUMMINS. I shall do so.

Mr. EASLEY. In the Grand Trunk Railway dispute with its 3,000 conductors and trainmen both sides were so displeased with the award that they began negotiations independently of the board. After a month of fruitless endeavors the men struck and the situation became so serious that the National Government itself, similarly as did our Federal Government in the matter of the recent railway controversy after the mediation board had failed, took up the question and brought about a settlement after a 10-days' strike.

In a sixth dispute that the Cumberland Railway & Coal Co. had with its 1,500 miners, the award was refused by the men and the mines were shut down for eight months.

In a dispute between the Western Coal Operators' Association and 2,100 miners, after the award was handed down neither side accepted, but began negotiations and worked out an agreement themselves; all of which looks very well in a report, were it not that the men had been on strike all the time, even before applying for a board. There is nothing to explain how the board could with propriety be officially hearing the dispute while the men were openly flouting the law.

In the Canadian Pacific Railroad dispute, with 8,000 men in its mechanical departments, the award was accepted by the company under protest, but the men would have none of it and struck, remaining out for two months.

In a dispute between the St. Johns Street Railway Co. and its employees the board handed down a unanimous award, but the company refused to accept and the men struck.

In a dispute between the British Columbia Telephone Co. and its 321 electrical workers the men struck without asking anybody's permission. Instead of putting them in jail the conciliation board did the much more sensible thing of bringing about a settlement by mediation, forgetting about the jail. But what about the majesty of the law?

In a dispute between the Canadian Pacific Railway and 1,300 of its employees, which the report says also affected indirectly 15,000 employees, there was both a defiance of the law and a confession of utter inefficiency. The board does not put it in exactly that language, but puts it in this naive way:

Report of board was accompanied by a minority report signed by Mr. Duval. Prior to the date of the application the employees had gone on strike and remained out from November 1 until February 3, when the department was informed that an agreement had been reached by the parties concerned and the employees had accordingly resumed work.

So far as the penalty for striking or locking out before applying for a board is concerned, there is no attempt to enforce it and it might just as well be repealed. To jail seven or eight thousand men is neither a physical nor a political possibility in Canada any more than it is a physical or political possibility for the United States to jail 400,000 of the members of the railway brotherhoods in case we had the Canadian act, and they struck in spite of it. But if they waited until the award was handed down they could strike without raising that question.

The author of the Canadian law is official authority for the statement that the compulsory feature of the Canadian act has made more lawbreakers than all the jails in the Dominion of Canada could hold.

If we had had the Canadian act in this country last spring, when the railway brotherhood men started their controversy, and the board had not granted the demands of the men, in my opinion they would have been on strike in August, about the time they were negotiating at the White House; that is, of course, if they had not flouted the law, as is openly done in Canada, and struck without waiting for an investigation and a decree.

It must be borne in mind that in submitting a case under the Canadian act to a board does not mean submitting to arbitration, but simply an enforced investigation. Where both sides submit to arbi-

tration they feel in honor bound to stand by the award, however distasteful it may be, but none of this moral force is back of an award handed down through an enforced investigation.

I have confined this statement to an examination of the actual operation of the Canadian act as reported by its most partisan advocates without discounting the self-interest of the salaried officials in perpetuating their jobs by making their administration appear most successful, and my conviction is that the adoption of its principles in this country would not only grievously disappoint the hopes of its advocates but would tend to make of our wage earners a horde of lawbreakers.

The difference between compulsory arbitration, which many strongly oppose, and compulsory investigation, which the same people just as strongly propose, and the constitutional aspect of the matter, I will not discuss in this statement, and in what I have said I am only voicing my own sentiments. The National Civic Federation has not officially passed upon the question, although in earlier days the officers of the organization, from Mr. Low down, were all opposed to either compulsory arbitration or compulsory investigation. This is also the personal view of Mr. Low's successor, Mr. V. Everet Maer.

I realize that this statement is not a constructive one, in that it does not answer the question, "If the Canadian act will not meet the situation, what will?" Destructive criticism is always easier than constructive, but I do not believe that by any form of compulsory legislation we can meet the issue. The Newlands Act, while successful in 73 cases, was unsuccessful in the largest and most important case of all, the one that was temporarily settled at the White House last August.

While there is no likelihood of any solution of the so-called labor and capital problem being arrived at this side of the millennium, as in fact we have found no solutions for hundreds of other very grave problems, governmental, industrial, and financial, yet we are getting along, and I do believe that some kind of mediation board, named by the President and mutually agreed upon by the railroad managers and the railway brotherhood leaders, under Federal supervision, would meet the present dilemma. It would not absolutely prevent a recurrence of the crucial situation that faced the country last fall, nor do I believe that there is any scheme that could absolutely prevent such a recurrence. It is proposed by some that the Government should take over the railroads and put them under military operation—not a simple process with the ideas of the American people as to the proper functions of government, and also a possible jumping "from the frying pan into the fire"—and even then strikes would not absolutely be prevented, as we seen in those European countries where the Governments own the railroads. To talk about soldiers running trains is all well and good, but soldiers are not engineers. They might make conductors and firemen, but no railroad nor Interstate Commerce Commission would permit any other than experienced engineers to take out their great engines. However, this is only an academic proposition at this time. But if the present crucial difficulties were composed it is not likely that there would be for many years a recurrence of the ugly questions that now confront us. By that time it is possible we may be so much

better that we shall not need a solution, or we may be so much wiser that we shall know what to do in case a solution is required.

Senator BRANDEGEE. What is the title of the lecture that you are to deliver; what is the general subject?

Mr. EASLEY. The Canadian compulsory-investigation act.

Senator BRANDEGEE. It is all on that subject?

Mr. EASLEY. I have taken this out of it. It is the whole arbitration question. The National Civic Federation has been studying this matter for 15 years.

Senator BRANDEGEE. Have you given any thought to the proposition of Senator Underwood?

Mr. EASLEY. That the Interstate Commerce Commission—

Senator BRANDEGEE. Shall regulate both hours of labor and rates of wages and disputes between railway employees and the managers?

Mr. EASLEY. I have given it some thought, but not enough—I remember five years ago I was very strongly in favor of that. I do not know now whether I am so strongly for it as then. That is, the idea of getting the machinery to do all that would seem almost a physical impossibility, but I would not want to speak positively, because I have not studied it sufficiently.

Senator BRANDEGEE. On the single question that the Government, through the Interstate Commission, should adjust wages of railway employees—on that one question have you any particular views?

Mr. EASLEY. That is the gist of that whole proposition.

Senator UNDERWOOD. The rates of wage are practically the same throughout the United States in the various branches of employment on these railroads, are they not?

Mr. EASLEY. Well, I am not—

Senator UNDERWOOD. There is not much, very much, variation.

Mr. EASLEY. I am not a member of any labor union and I do not know that. Of course the Brotherhood men can answer that.

Senator BRANDEGEE. Irrespective of the difficulty of doing it on account of the amount of work involved, and the number of commissioners that it might necessitate, have you any opinion as to the wisdom of the public policy of the Government attempting to fix wages?

Mr. EASLEY. Generally speaking, I am opposed to the Government going into those questions. I do not believe in the Government fixing wages through minimum wage boards, and, generally speaking, I am opposed to the Government going into anything that is not absolutely necessary.

Senator BRANDEGEE. So am I, as a general thing, and yet where Congress is given the exclusive power of regulating interstate commerce I wondered whether that consideration would make any change in your opinion.

Mr. EASLEY. As I said, five years ago I was very strongly in favor of that proposition on the general idea that as the Interstate Commerce Commission fixed the rates, the same body should fix wages. But I would be very glad to submit a paper on that later, but I would not want to—

Senator BRANDEGEE. Congress did that when it passed the Adamson law, did it not?

Mr. EASLEY. Yes, sir; it attempted to.

Senator BRANDEGEE. Have you any objection to stating what your opinion of the Adamson law is, whether it was a wise piece of legislation or not?

Mr. EASLEY. It was an emergency measure which nobody wanted.

Senator BRANDEGEE. And does anybody want it now, as far as you are advised?

Mr. EASLEY. As far as I am advised, neither the railways nor the brotherhoods want the Adamson Act, but it was an emergency measure, and I am not prepared to criticize those who—

Senator BRANDEGEE. We are familiar with that fact.

Mr. EASLEY. I think if I had been in Congress I would have done just exactly as I would if I had been held up at the point of a gun and asked to hand over my watch. I would hand out my watch, but the next time I would have a gun. I think I would have voted for the Adamson law, but under protest.

Senator ROBINSON. How long have you been studying this subject and the questions analogous to it?

Mr. EASLEY. We have dealt with strikes and lockouts for 15 years—since the beginning of our organization.

Senator ROBINSON. Have you or the organization you represent reached a conclusion as to the best means of determining these controversies and avoiding, as far as possible, strikes and lockouts?

Mr. EASLEY. Is this Senator Robinson?

Senator ROBINSON. Yes.

Mr. EASLEY. You may remember we all appeared before your committee—Mr. Low, the railway presidents, and the brotherhoods—favoring the Newlands Act. We thought that was going to do it.

Senator ROBINSON. I do remember that. Now, in your opinion, has the Newlands Act proved adequate for the determination of controversies and for the protection of the public interests?

Mr. EASLEY. It has, except in this one big example, which of course is the most important one.

Senator ROBINSON. During the course of your studies have you found other instances where universal railway strikes were threatened in this country, or imminent?

Mr. EASLEY. No, sir; this is the first time that there has been a national combination—a national question. It has been by divisions or by districts and, prior to that, only by roads.

Senator ROBINSON. In some instances heretofore, have those strikes or threatened strikes affected large sections of the country, or a great extent of railway lines?

Mr. EASLEY. Yes, sir; 10 or 15 years ago there were controversies between one railroad company and its employees, and then it got to be southern, eastern, and western district combinations, and finally this national combination. This is the first time it has come to a national combination.

Senator ROBINSON. To what extent was interstate commerce tied up on the occasion of the strike to which you have just referred—the general strike?

Mr. EASLEY. Well, do you mean—that only occurred in the Debs strike. It was not general. He tried to make it so, but the brotherhoods would not work with him. It was in the West largely. That was in 1894, I believe. That was not a national strike.



Senator ROBINSON. In the course of your study of this subject have you continuously, during the 15 years that you have studied it, been charged with responsibility touching these subjects for your organization?

Mr. EASLEY. Yes, sir.

Senator ROBINSON. Have you been in the position where you were requested to make decisions in these matters?

Mr. EASLEY. Our department, dealing with that question, is the department for mediation and conciliation. That department attempts to compose differences, and we have worked on that line for some years.

Senator ROBINSON. Have you been able to work out or find anything that met your trouble, save, substantially, the Newlands Act?

Mr. EASLEY. That was the best thing at that time, and at this time I know of no legislation that can absolutely prevent strikes. As I say, I believe that if the railway managers and brotherhoods could be called together by some power to work this out they could do it. They were working together two or three weeks ago. There is no secret about that. But it has all been dropped now.

Senator ROBINSON. Passing, for the time being, the question of the prevention of railway strikes, what I am interested in knowing is whether you, as a representative of the National Civic Federation and one who has been studying this proposition for 15 years, have any positive legislation which you could suggest?

Mr. EASLEY. No, sir.

Senator ROBINSON. You think the legislation already enacted is approximately as perfect as can be devised now?

Mr. EASLEY. No, sir; I did not say that. It is easy to say, as with the Canadian act, "It will not work," but I am not prepared to say what will work.

Senator ROBINSON. Notwithstanding the extensive researches you have made, you can not present any affirmative measure?

Mr. EASLEY. Fifteen years ago I could have given you many, but now none.

Senator ROBINSON. It seems generally there is a reaction which occurs in one's mind when one studies a matter for any length of time. A few years ago you say you were affirmatively and positively in favor of the proposition advanced by Senator Underwood, to vest in the Interstate Commerce Commission the power to adjust wages and hours of service.

Mr. EASLEY. I did not mean to include Senator Underwood's proposal in the reforms I would have suggested 15 years ago. That is another question. I am not sure I would not favor it yet.

Senator ROBINSON. There has, however, been some reaction in your mind on that subject?

Mr. EASLEY. I know I am not as certain about it now as I was five years ago, but the reason is not the same as the reason that I am now opposed to many of the things I favored 15 years ago. It has been experience that has taught me that some of the things I was for then will not work, but I have not had any experience with the proposition advanced by Senator Underwood, and, therefore, I am not able to speak positively on that.

Senator ROBINSON. You characterize the Adamson Act as a measure you would have voted for under protest; that the measure was

enacted substantially under compulsion. You have had a great deal of time to study the subject since the act was passed, and, therefore, let me ask you now, if the emergency should recur to-day, what would you, as a student of the subject and one who has studied the matter for 15 years, do? Suppose it should occur to-morrow; what would you recommend?

Mr. EASLEY. I believe that if the chairman of this committee and the chairman of the Interstate Commerce Committee of the House should invite the railway presidents and railway brotherhoods into a conference, without any law, and say, "Gentlemen, we appeal to you to work out a solution of this problem and propose something that is going to prevent this strike"—

Senator ROBINSON. That is exactly what the President did, is it not? Is not that as much an executive duty as it is a legislative duty when it—

Mr. EASLEY. Let the President call them there again, then.

Senator ROBINSON. That is exactly what was done. That is, you would recommend that the matter take the same course as it took before.

Mr. EASLEY. I do not know that—

Senator ROBINSON. Suppose the chairman of this committee and the others you have mentioned should, in case the emergency should again arise, call them together, as did the President, after they had already been in conference for many months and had failed to agree, and suppose again they failed to agree? Would you, then, think all action should be suspended and that the matter should take its course?

Mr. EASLEY. No, sir.

Senator ROBINSON. What would you recommend?

Mr. EASLEY. In the first place, I believe if they were called together again—remember, it is three or four months since this occurred, and the railway men and the brotherhoods have a lot of ideas which they did not have when they met in August. The situation is not the same. Suppose it was—suppose they could not agree. I do not know what to propose. If I were in Congress, though, I would feel that I would have to propose something, but not being in Congress, I do not know what to propose. I am not saying that to be facetious.

Senator ROBINSON. I understand. You would feel, notwithstanding the fact your voluntary position is one of a student of this subject, and during the course of your diligent research, you have been unable to work out any solution of that, that you are willing to present to this committee as your solution—

Mr. EASLEY. To-day.

Senator ROBINSON (continuing). Yet, if you had a position of responsibility, you would feel some legislation was imperative—that is what you mean?

Mr. EASLEY. Yes, sir; I say I would try to do something. I do not know what it is.

The CHAIRMAN. You would try to do something, but you would not know what to do?

Mr. EASLEY. I was in a committee meeting two weeks ago when we had together a number of large employers of labor and labor

leaders, and these employers were men who dealt with organizations of labor, and they have had these strikes and lockouts—we had this very matter up—and I want to say to you that not a man could come here—unless he had learned something since then—and propose to you a piece of legislation which they thought would absolutely prevent strikes and lockouts, because it does not seem, in the nature of things, possible to do it.

Senator TOWNSEND. In that connection, if you were to have a conference with the men, you would not have anybody representing the public there, and you think it would be the duty of the public and Congress to abide by any solution the employer and employees should arrive at?

Mr. EASLEY. In my statement I said that the board should be made up of an equal number of representatives of the railways and representatives of the brotherhoods, and this idea came from a conference that they had themselves. The railway brotherhoods proposed this in a committee of ours that met in Washington the 4th day of December. They would be named by the President. They would act together. Of course if they entered into a conspiracy against the public, that would all come out. They would not dare to do that. If they did, you could find it out. They could lay down an intelligent proposition, because they understand the subject matter. One of the worst things in arbitration in all my experience—and it is the experience of 99 out of 100 men who have had to deal with arbitrations—is the assininity, too frequently, of the public representatives on boards of arbitration. That was the proposition that brought us over here in 1913. It was because under the Erdman Act they could have only one man as an umpire. The other men might as well have been attorneys for the railways on the one side and the brotherhoods on the other.

The first big case that came along under the Newlands Act—Mr. Low, as president of the National Civic Federation, was the one who appeared before you and tried to get this situation straightened out—and, by the way, the White House meeting in 1913 was larger than the one last August, because the railway presidents, the brotherhood chiefs; Senator Newlands, chairman of this committee; Judge Clayton, then chairman of the House Judiciary; James R. Mann, minority leader of the House; Secretary of Labor Wilson; and Mr. Low met with the President, at his invitation, in the White House in a joint conference, and there were also 600 railway brotherhood chairmen waiting in New York to call a strike if the legislation was not secured. Congress was under compulsion just as much when it passed that bill as when it passed the Adamson Act last fall. That story should go along with the other one.

Senator BRANDEGEE. You did not state the composition of this board.

Mr. EASLEY. Mr. Low was taken in on that board as umpire—he and Mr. John H. Finley. They heard the case for two months, and when it was concluded Mr. Low stated he would never again favor a representation on the part of neutral arbitrators on the board. He, with the wonderful control of language he possessed—he didn't say that, but we know that to be the fact—he said that he and Mr. Finley had written a decision which they themselves could not interpret. That is the statement he made. But that goes into a question on

which I have a great deal to say, about the composition of the board, and you are not discussing that question to-day.

The CHAIRMAN. Your idea is the operators and operatives themselves can settle these questions better than through the interposition of a neutral arbitrator?

Mr. EASLEY. Yes; because they know the subject. They know what the principal points are. That is what mixes up everybody else who comes in from the outside.

Senator UNDERWOOD. Are you not overlooking one fact? So far as the technical decision, the immediate dispute between the two sides, the employer and employees, is concerned, I am inclined to agree with you that they can reach a conclusion that will be more satisfactory to them, who understand the matter. But is not the main proposition that we have got to consider in this railroad question not the question of dispute between the employers and employees of the railroads, because if that was all and they were the only people involved, that would not be of much consequence to the public; but is not the main question the fact that these arteries of trade being closed because of their dispute, and pending a settlement of their disputes, lays a burden upon the commerce of the country—is not that of far more importance than any other consideration?

Mr. EASLEY. It is very important, and I would further add that any award they would agree upon, that award should be passed upon by the Interstate Commerce Commission, in some way, to protect the public.

Senator UNDERWOOD. You think that no satisfactory arrangement could be worked out that does not contemplate that the public should be represented in the final settlement?

Mr. EASLEY. I would not put them on the board for the reason I have suggested, but at the same time the public should have the last say.

The CHAIRMAN. I will say to the committee that to-morrow the subject under consideration will be the Webb bill.

Senator UNDERWOOD. Had we not better finish this hearing before we take up another matter?

The CHAIRMAN. The difficulty about the Webb bill is that it has passed the House and is pressing, and a great many people from the outside wanted a time fixed for a hearing, and I fixed Friday, because I hoped this hearing would have been concluded by Friday. They will be here to-morrow. At all events, this matter is so pressing that we will hold a meeting on next Saturday at 10 o'clock, and after the hearing on the Webb bill to-morrow, we will postpone the Webb bill hearings to a later date.

I will also state to the committee that I received a communication from Mr. John R. Commons, the head of the department of political economy in the University of Wisconsin, inclosing a memorandum which contains proposed amendments to the so-called Newlands Act. Mr. Commons may later be able to appear before the committee. However, I will ask to have this memorandum inserted in the record and printed in large type.

(The letter and memorandum referred to are here printed in full, as follows:)

VIEWS OF PROF. JOHN R. COMMONS, OF THE UNIVERSITY OF WISCONSIN.

THE UNIVERSITY OF WISCONSIN,  
Madison, January 2, 1917.

HON. FRANCIS G. NEWLANDS,

*Chairman Interstate Commerce Committee, Washington, D. C.*

DEAR SIR: Since your joint committee was not able to get around to my testimony on railway labor disputes, in December, I am submitting memorandum of points I had prepared after receiving your invitation, and should be pleased to have you lay the same before your committee which is now considering amendments to the Newlands Act. The memorandum is accompanied by a rough draft of proposed amendments.

Identical letter is forwarded to Hon. William C. Adamson.

Respectfully,

JOHN R. COMMONS.

MEMORANDUM FOR AMENDMENTS TO FEDERAL MEDIATION, CONCILIATION, AND ARBITRATION LAW.

I. Instead of resorting to new and radical or reactionary principles, such as compulsory arbitration or compulsory postponement of strikes, investigate the reasons why the present law has broken down and then amend the law at those points, but retain its fundamental principle.

II. Principles of the present Newlands Act and of all State legislation (except that of Colorado):

1. Conciliation and mediation.
2. Voluntary agreement.
3. Investigation and voluntary arbitration.

4. Public interest safeguarded without depriving labor of the only weapon that has secured improvement in conditions.

III. Present law has broken down partly because it has two provisions inconsistent with the principle of voluntary agreement. These are:

1. Court review and court enforcement of award of arbitration board.

2. Reconvening the board of arbitration to interpret its award and thereby help the court in enforcing it.

These inconsistent provisions should be repealed as follows:

- (1) Stipulations 11 and 12 of section 3.
- (2) Parts of sections 6, 7, and 8, relating to court procedure and reconvening the board of arbitration.

IV. Substitute for above provisions:

1. A permanent joint national board of adjustment selected in equal numbers by the railway brotherhoods and the railway companies (say four on each side) to interpret all awards and to decide all disputes. (Provision for subordinate boards on railway divisions and individual railways, with appeal to the national board, if necessary.)

2. In case of disagreement on any point the board of adjustment to select an umpire, or, in case they can not agree on an umpire, a district court to appoint an umpire. The umpire not to be permanent,

but to be appointed anew on occasion of each disagreement. (Agreement of both sides to notify a district court which shall appoint this umpire and to abide by the umpire's decision should be made one of the stipulations in section 3 of the act.)

V. Reasons for substituting a permanent joint board of adjustment and occasional umpire in place of court review and court enforcement.

1. A similar board has existed for 14 years in the anthracite coal industry and has worked successfully. The plan is well known in other industries and is a recognized method of handling disputes.

2. A court of law can not or will not enforce a collective bargain. This has been held even in Canada. A collective bargain is different from a legal contract, and the existing law is inconsistent with its own principles when it attempts to secure enforcement through courts.

3. Neither can a court successfully interpret and review a collective bargain, mainly on account of the long delay and technical procedure.

4. Neither can a board of arbitration interpret its own award when it is reconvened. This has been proven by experience under the present law.

5. It is the failure of these inconsistent provisions in the present law which justifies the brotherhoods in refusing arbitration.

6. But a joint board selected voluntarily by each side, with an occasional umpire, has following advantages:

(1) It is always in session.

(2) It is composed of men who know the technical problems and the collateral effects of awards and interpretations.

(3) The knowledge that they must refer to an umpire in case of disagreement tends to prevent deadlocks, rather than have their business confused by an outside ignorant party, however fair minded he may be.

(4) With such a joint board in existence it may be expected that it will settle most disputes which in the past have been submitted to outside boards of arbitration. This has been the experience in the anthracite industry.

VI. Retain something like the present Federal Board of Mediation and Conciliation, but make its business solely that of confidential adviser and mediator to bring together both sides in case the joint board of adjustment and umpire threaten to break down, but especially to deal with disputes of other employees not included in the brotherhoods. (This board might be reduced to one member with power to call in temporary mediators if necessary.)

VII. Retain present provisions for temporary boards of arbitration, to be resorted to only in case the joint board and umpire break down.

VIII. Create a division of railroad labor statistics in the Interstate Commerce Commission, composed of one statistician appointed by the commission and two advisory statisticians, nominated one by the railway companies and one by the brotherhoods, for the following purposes:

1. To assemble and maintain up to date all facts which either side considers will be needed in future disputes.

2. To secure agreement in advance by both sides as far as possible on the facts.

3. To assist boards of mediation, arbitration, or investigation under the act and give information to Congress and the public.

4. To advise boards of arbitration or investigation as to procedure, codes, standards, pitfalls, etc., of preceding boards.

(This division should be merely statistical, and the Interstate Commerce Commission should have no power whatever to fix wages. Other departments of Government should be required also to aid the statistician when called upon within the scope of their official duties. The statistical division would avail itself of the present powers of the Interstate Commerce Commission to get reports from the railways.)

#### IX. Reasons for a division of railroad labor statistics:

1. At present boards of arbitration waste much time in disputes over facts, and are then so confused by the mass of figures that they tend to decide disputes regardless of all the facts.

2. This proposed division of railroad labor statistics is practically identical with the statistical staff that each arbitration board sets up after it assembles. It is proposed only to make the staff permanent instead of occasional.

3. The proposed division is also practically identical with the statistical staff which the present Goethals commission has created for the purposes of the eight-hour law. The proposal would practically make this statistical staff a division of the Interstate Commerce Commission after the Goethals commission disbands.

4. This statistical division would be looked to by the public for complete and accurate statement of facts in case of threatened strikes, and the present practice of each side in giving out misleading statements to influence public opinion would be stopped.

X. Authorize the President when, in his judgment, a threatened strike is a public menace to appoint a President's board of investigation without waiting for the consent of both sides. Give this board same powers as present boards of arbitration in so far as getting evidence is concerned, but authorize it only to make a report and recommendations, and do not provide penalties or injunctions against a strike and do not authorize enforcement of recommendations by penalties or injunctions. Retain present provisions of the law against compulsory personal service. Board dissolves on submitting its recommendations.

Provide that the joint board of adjustment (and the umpire, if needed) shall carry out and interpret the recommendations of the President's board of investigation.

(The present boards of arbitration under the Newlands Act have powers to take testimony and get evidence, but this power exists only if both sides agree to the creation of such a board. The proposed President's board would be created and would have this power of taking testimony even if one or both sides refused to give consent. In this respect the proposition goes beyond the powers granted under the present law.)

#### XI. Reasons for a President's board of investigation and against compulsory prohibition of strikes (or lockouts):

1. Similar laws already exist in some 20 American States where a State board has power to take testimony without waiting for consent of both sides, but not power to enforce an award nor to prohibit strikes or lockouts pending investigation. Hence this is not a new principle so far as State legislation is concerned and is not incon-

sistent with voluntary arbitration. The board would be somewhat similar to the one appointed by the President at the time of the anthracite coal strike of 1902 and similar to the present Goethals commission under the eight-hour law.

2. Compulsory prohibition of strikes either can not be enforced or will not be enforced by public officials, because they will shrink from imposing wholesale penalties and imprisonment. A Canadian minister of labor has publicly stated that they do not prosecute for violations.

3. To try to take away from labor the right to strike or to threaten to strike will make the election of President and Congressmen turn on the effort to get the labor vote and will tend to drive labor and capital more actively into politics. The enforcement of penalties will be likely to depend on campaigns and elections.

4. By perfecting the present system at the points where it is inconsistent or incomplete the law will be just as likely to avoid strikes as will the threat of fines and imprisonment.

5. The President's board of investigation is proposed only as an emergency measure and a last resort, and would be used only when one side or the other had refused all the other steps—namely, appointment of the joint board of adjustment, appointment of umpire, appointment of board of arbitration—and had determined to "put it up" to the President. The President's board of investigation would then give the leaders of that side a place to "get off" without yielding to the other side and give the President a place to "get off" without deciding in favor of either side. It is submitted that the advantage of providing such a place will be recognized by those who are familiar with the facts and motives.

#### ROUGH DRAFT OF PROPOSED AMENDMENTS.

##### Section 4. Strike out the following:

"Eleventh. Shall provide that the award and the papers and proceedings, including the testimony relating thereto, certified under the hands of the arbitrators, and which shall have the force and effect of a bill of exceptions, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arises or the arbitration is entered into, and shall be final and conclusive upon the parties to the agreement unless set aside for error of law apparent on the record.

"Twelfth. May also provide that any difference arising as to the meaning or the application of the provisions of an award made by a board of arbitration shall be referred back to the same board or to a subcommittee of such board for a ruling, which ruling shall have the same force and effect as the original award; and if any member of the original board is unable or unwilling to serve, another arbitrator shall be named in the same manner as such original member was named."

and substitute:

"Eleventh. Shall provide that any difference arising as to the meaning or the application of the provisions of an award made by a board of arbitration shall be referred for interpretation and enforcement to a board of adjustment, composed of an equal number of representatives selected, respectively, by the employees and the em-



ployers; and that if said board of adjustment disagrees on any interpretation the same shall be referred for final decision, within 30 days therefrom, to an umpire chosen by said board; and that if said board disagrees upon the choice of an umpire any district court of the United States shall be notified, within 30 days, of such disagreement; and that if the said board of adjustment disagrees on the selection of a district court then the district court of the ——— district shall be so notified; thereupon such district court shall appoint the umpire, who shall decide, within 30 days, such disputed interpretation or application of the award; that the compensation and expenses of said umpire shall be paid by the parties to the agreement; and, further, that the decisions of such umpire shall be final and conclusive upon the parties to the agreement.” (Other time limits should probably be inserted.)

Section 6. Strike out:

“before a notary public or a clerk of the district or the circuit court of appeals of the United States, or \* \* \*

“If the parties to an arbitration desire the reconvening of a board to pass upon any controversy arising over the meaning or application of an award, they shall jointly so notify the Board of Mediation and Conciliation, and shall state in such written notice the question or questions to be submitted to such reconvened board. The Board of Mediation and Conciliation shall thereupon promptly communicate with the members of the board of arbitration, or a subcommittee of such board appointed for such purpose pursuant to the provisions of the agreement of arbitration, and arrange for the reconvening of said board or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the board will meet for hearings upon the matters in controversy to be submitted to it.”

Section 7, strike out:

“and a transcript of the testimony taken at the hearings, certified under the hands of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk’s office as provided in paragraph 11 of section 4 of this act. And said board shall also furnish a certified copy of its award and the papers and proceedings, including the testimony relating thereto. \* \* \*

Section 8, strike out:

“That the award, being filed in the clerk’s office of a district court of the United States as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly at the expiration of 10 days from such exceptions thereto for matter of law apparent upon the record, in which case said award shall go into practical operation and judgment be entered accordingly, when such exceptions shall have been finally disposed of either by said district court or on appeal therefrom.

“At the expiration of 10 days from the decision of the district court upon exceptions taken to said award as aforesaid, judgment shall be entered in accordance with said decision unless during said 10 days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided.

"The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

"If exceptions to an award are finally sustained, judgment shall be entered setting aside the award in whole or in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment, when entered, shall have the same force and effect as judgment entered upon an award."

Add the following sections:

"SEC. —. The Interstate Commerce Commission shall create a division of railroad labor statistics, to be composed of a statistician and two advisory statisticians, one of whom shall have the confidence of representatives of employers and one of whom shall have the confidence of representatives of employees subject to this act. (This section should probably be modeled after those election laws which authorize political parties to name watchers and judges of elections.) The said division shall compile and maintain, up to date, all facts and statistics which either of the statisticians deems necessary or convenient in the arbitration or adjustment of said controversies, and shall furnish such information as may be requested by any board or official intrusted with duties under this act; and shall publish from time to time, and at least annually, the results of its investigations. Any member of such division not agreeing to any statement of fact thus furnished or published shall be permitted to state in the same paper the grounds of his dissent.

"SEC. —. Whenever, in the judgment of the President, a controversy threatens to interrupt the business of employers subject to this act to the serious detriment of the public interest, the President shall appoint a board of investigation of three or more members, who shall investigate the facts and shall recommend to the President and the parties a reasonable plan of settlement of the controversy. This recommendation shall include the creation of a board of adjustment and the selection of an umpire as provided in section 4 of this act, to whom the recommendation shall be referred for interpretation, amendment, and enforcement. Such board of investigation shall have the powers of investigation provided in section 5 of this act, but no order of any court or public authority shall require any person to observe any recommendation of the board."

Amend section 10 to provide for compensation and expenses where needed.

(Thereupon, at 12 o'clock m., the committee adjourned until to-morrow, Friday, January 5, 1917, at 10 o'clock a. m.)



## GOVERNMENT INVESTIGATION OF RAILWAY DISPUTES.

SATURDAY, JANUARY 6, 1917.

UNITED STATES SENATE,  
COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The committee met at 10 o'clock a. m., at room 326, Senate Office Building, Senator Francis G. Newlands (chairman) presiding.

Present: Senators Robinson, Cummins, Poindexter, Brandegee, Townsend, Thompson, and Lippitt.

The CHAIRMAN. The committee will come to order. We will first hear from Dr. Crafts.

### STATEMENT OF DR. WILBUR F. CRAFTS, SUPERINTENDENT AND TREASURER OF THE INTERNATIONAL REFORM BUREAU, WASH- INGTON, D. C.

Dr. CRAFTS. Mr. Chairman, the International Reform Bureau for 22 years has had in its platform as one of its many purposes "to substitute arbitration for both international and industrial war," which we think have some very strong resemblances. I appear not in the interest of the railroad employers, nor yet of the employees. I think it is a supreme mistake to think this is "a conflict of capital and labor"; it is a three-cornered conflict, in which the largest interest is the interest of the public. Ninety-five per cent of the people involved, 95 per cent of the suffering, and 95 per cent of the interest in every way are the interests of the public—of those who are neither capitalists nor organized laborers. I have suggested sometimes that a cartoon would represent the case—a giant with a pigmy named "Labor" on one shoulder and another pigmy named "Capital" on the other. They are fighting around his neck and choking him, and through his gasps he says, "I see—there is—a conflict—of Capital and Labor." The idea that the public has no interest in the matter, but simply to look on and suffer, is one of the curious cases of unconscious humor.

Senator BRANDEGEE. The public is both capital and labor, is it not?

Dr. CRAFTS. Well, there are a great number that are not either capitalists or laborers in the usual sense of those words—that are neither connected with organized labor nor employers of it. I am one of them. I have done a great deal of labor; I cut wood and did all sorts of work to get money to pay my way through college and have been through all sorts of hardships. I have often spoken at labor conventions. But I speak in this case as a humble representative of those people who are neither employers nor employees, and in the interests of the larger public.

Speaking of this matter of resemblance between strikes and war, now when we are forming all over the world an opinion that we must have a league of compulsory peace, we ought to be thinking in Congress of a league of compulsory industrial peace. The war that we call a "strike" is a war without any Hague rules to mitigate it—without even Queensbury rules. I would rather see a prize fight in the streets than a strike, because we would have some rules. I should rather see a real domestic war because we should have some Hague rules to go by. But when we have a strike all the violent elements of the community, all the criminal elements, rally around the strikers, and we have no rules whatever. The injury to property comes closer to us in a strike ordinarily than it does in a larger war.

I desire to give three facts that seem to bear on the proposed legislation for restraint of strikes. The first is something I saw in Australia, where they settle industrial troubles usually in a civilized fashion. I was in Sydney, Australia, one day when a court, after a long, elaborate, and thorough study of the question, awarded \$5,000,000 to the employees of the sheep shearers, the principal industry of that country—\$2 a week additional, \$100 a year apiece. They would have lost it in a week in a strike, but without any interruption of industry, referring the matter to the court, the people being heard on both sides, the facts of the increased profits of the industry being fully exposed, this award was made without any more excitement than an ordinary award in a civil court would arouse—employers and employees and the public accepting it as the civilized method of settling the disputes.

While there is no compulsory arbitration in Australia—there is in New Zealand—these questions are commonly settled in Australia also by referring them to a court. I am very much in favor of compulsory arbitration. That is more than this bill contemplates, but we should certainly go as far as the President recommends and say by law there shall be no railroad strike without compulsory delay for consideration, that the public may know something of the merits of the case—as they did not in the recent instance.

As we have followed Australia in the Australian secret ballot; as we have followed Australia in the eight-hour law; as we are following Australia in woman suffrage, we should ultimately—and that soon—follow the best part of Australasia, New Zealand, and become, through compulsory arbitration, "a land without strikes."

I have no objection to piano makers striking. I do not advocate any legislation with reference to strikes on luxuries; but I believe we need very stringent legislation to prevent strikes when they would interfere with necessities of life; and the regular operation of the railroads is as much a necessity of life as the regular circulation of the blood in the body. The body politic has for its veins and arteries the railroads, and to stop the railroads is just as certainly a case of murder at wholesale as to stop the circulation of the blood would be a case of murder at retail. I wonder that the people have not all seen that.

Coming back from Australia I was detained by strikes in British Columbia. I was beset by strikes when I got into the State of Washington. I was again unable to phone when I got to Butte. I felt as if I had come back from civilization into savagery; that I had gotten back beyond the Middle Ages into the days of chronic

violence in the streets when every man must carry his club or sword or gun. I have never gotten over the impression that we are a century behind Australasia in this matter of strikes. A strike takes us back beyond modern rules of war; behind the accepted judicial scheme of civilization, in allowing violence in the streets in connection with the settlement of an industrial dispute that usually involves only about 5 per cent of the population, whether it be a city strike or a national strike.

And now for my second fact. I was recalling with Gen. Miles recently as to what President Cleveland did in a case like this. It is very pertinent and ought to be in the record. I have marveled that it has not been published far and wide in connection with the discussion of the postponed railroad strike that still threatens the whole Nation. I was a pastor in Chicago at the time when railroads entering Chicago were tied up by a strike—not so general as is now proposed. This is what happened. To the strikers were drawn all the violent elements, the disorderly, criminal elements in the community. They swarmed in the streets—young men also out for a lark—and we looked out on streets where paraded every element of violence—probably twice as many criminals and wild boys as there were strikers. The city was absolutely helpless until Gen. Miles came in with a few Federal troops. Before that we had gotten out with our guns and defended our own homes. It was an aberration from civilization; it was a relapse into a state of barbarism. The mayor, afraid of the labor vote, was not doing his duty in keeping order. Gen. Miles called at his office and called his attention to the situation; that the subtreasury and national banks were threatened; that mails were being delayed; and the channels of interstate commerce were congested; and asked what he was going to do about it. The mayor hemmed and hawed; did not want to interfere; was evidently afraid of the political effect of vigorous law enforcement by police and militia. Gen. Miles said to him, "You make this a Baltimore, and we will make it an Appomattox. You must keep open the channels of interstate commerce. You must not allow the mails of the United States to be stopped here. You must not allow the United States subtreasury to be robbed. The intimation was that in the name of the President of the United States he would take charge of the city of Chicago unless the mayor was able to handle the situation. It was not simply the case of a State keeping order in a city when the city authorities failed to do it. Had not the mayor heeded the warning we should have learned the power of the Federal Government to interfere in the interests of the country when the mails and interstate commerce are involved. The term "keep open the channels of interstate commerce" was used. The circulation of the blood must be protected.

And now for the third instructive fact. I was in New York in the blizzard of 1895 when the whole city was put back into a state of nature, as if we had no streets; as if we had no railroads; as if we had no telegraphs; as if we had no fire department. We could not get to our grocers, and they could not get their supplies; and we found that on the second day we were getting near to starvation. There is no city in the country that has supplies for three days. The body politic is like the human body. The circulation of supplies for

merchandising and for factories is a matter of coming in and going out all the while. The United States could not, without starvation of its babies, without the death of its people wholesale, stand a three days' strike on the railroads. It would be as impossible to live as to have the circulation of the blood stopped in our bodies for three days.

Of course, an individual may give up his job if he has no contract to the contrary, but the conspiracy of a group of men to stop the channels of interstate commerce is nothing less than a conspiracy to murder at wholesale. Babies would be dying within 24 hours in great numbers and mothers would soon be without bread. The fathers could not work in the shops when the shops were not supplied with the raw materials. The result would be, of course, that within three days, and in many cases within two days, we would have a condition that would make us forget the *Lusitania*; that would make us think of Belgium as matched again. The very slaughter of the Armenians is not more terrible than what would happen in this country in case of a general railroad strike lasting a week.

This committee of the Senate and the corresponding committee of the House has the tremendous responsibility of finding some way by which such a peril as threatened us a few months ago of such a holdup, such wholesale murder, shall not threaten us again.

The public is entitled to protection against all strikes that cut off necessities of life. No strikes should be allowed in coal mines. There ought to be no strikes in the matter of the supply of bread and meat. And railroad trains are as necessary as the bread and meat and coal, which we can not get without them.

You remember when in France they started a strike in the mail service. France put her soldiers in the strikers' places and kept the mails going. Would we tolerate a strike in the mail service? Does any one suppose—is there any labor leader who supposes that a strike in the mail service would be tolerated? But a strike on the railroads involves that. And so I stand for a deliberate preparation for these future difficulties, of which the most important is to prevent a railroad strike.

I was kept out of Sweden by what was intended to be "a general strike," and I want to put on record here what happened then because of the reserve powers which were discovered when it was proposed that the demands of labor must be granted, right or wrong, and instantly, on peril of a general strike that would prostrate everybody. What happened was this: The merchants and ministers and lawyers and students, and others of the great public, who are neither capitalists or organized laborers drove the hacks and did whatever other work was necessary to keep business going. We ought not to allow the criminal conspiracy to kill what is involved in such a general strike. Let us at once provide that there shall be a compulsory pause before every railway strike for the examination of the case, and I hope we shall ere long get to the point of compulsory industrial peace by compulsory arbitration.

The CHAIRMAN. If no one else desires to be heard, the committee will now adjourn.

(Thereupon at 11.50 o'clock, a. m., the committee adjourned to meet Monday, January 8, 1917, at 10 o'clock a. m.)

# GOVERNMENT INVESTIGATION OF RAILWAY DISPUTES.

MONDAY, JANUARY 8, 1917.

UNITED STATES SENATE,  
COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The committee met at 10 o'clock a. m., at room 326, Senate Office Building, Senator Francis G. Newlands (chairman), presiding.

Present: Senators Underwood, Thompson, Robinson, Cummins, Brandegee, Lippitt, and Poindexter.

The CHAIRMAN. The committee will come to order. Mr. Furuseth, are you ready to proceed?

Mr. FURUSETH. Yes, sir.

## STATEMENT OF MR. ANDREW FURUSETH, PRESIDENT INTERNATIONAL SEAMEN'S UNION OF AMERICA, SAN FRANCISCO, CAL.

The CHAIRMAN. Will you state your full name and address for the record, Mr. Furuseth?

Mr. FURUSETH. My name is Andrew Furuseth; president of the International Seamen's Union of America; address, San Francisco. Address here, National Hotel.

Mr. Chairman, I come here on behalf of the seamen to protest against any legislation that will in any way prevent either an individual or a combination of individuals from quitting work at any time for any reason or for no reason. Whenever it has been the endeavor of society to compel either individuals or classes of individuals to continue to work against their will it has ended in disaster; first, to those who were so compelled; secondly, to society itself.

Whenever, from a fear of what really is imaginary, any such legislation as this which is proposed here—industrial courts, compulsory labor—when any such legislation has been enacted it has resulted, if it was on a very large scale, in depopulating the country in which it existed. This was the situation in Rome after the promulgation of the anticomination decree of Caesar. When in the later feudal ages the people had been tied to the soil in such a way that they could not live population became stationary and then began to decline. There are some European countries which have, for certain people at least, this kind of legislation. Hungary has legislation under which the farm laborer who begins working for a farmer in the spring is compelled to continue to work for him until the harvest is garnered, and the result is that the Hungarians are drifting out over the Hungarian borders in every direction, trying to get away. If they are unable to get away, if they are unable to overcome the



law, then there is first insurrection and, when that is broken, decimation of the population by the people refusing to breed.

Here in the United States you have had no such law, except upon seamen, since the abolition of slavery, and the result upon the seamen was so terrible that Congress wiped it out. The American quit going to sea. Modern education and the status under which the seamen lived—and it is the status which is contemplated to be placed upon the railroad men—can not exist together. The feeling that expresses itself through a strike will express itself in other ways, and when it can not obtain any redress of grievances the men engaged in such calling quit their labor and seek other labor, or no labor, as the case may be. The number of native Americans going to sea is negligible. The law of freedom has been in operation too short a time yet to have overcome the old condition. The fact that there is freedom amongst the seamen has not penetrated sufficiently through the population to really bring the boy and the man to sea again. But with freedom left to operate the time will not be very distant when in place of the merchant vessels of the United States being manned by foreigners, who are under no obligation to the United States, they will be manned by natives or naturalized men—naturalized men, I presume, to some slight extent, but in substance by natives—and you will not then have any serious question as to how to man the Navy either in peace or war.

The condition imposed upon the seamen through this legislation was such that they refused to marry; in fact they could not. Their wages were stationary, and while the prices of everything rose around them their wages did not follow the upward trend, and it became impossible for them to assume family relations. And so you went to Scandinavia, to Germany, to the Mediterranean Basin, to China, and Japan, and the Malay Peninsula, and to the Kroomen, on the Mosquito coast, for men to man your vessels. It was because of this kind of law that the American boy refused to enter into it; the American man refused to remain in it.

It may be said, perhaps, that this is not the same. The principle is absolutely the same. The ship is a common carrier on the water, the railroad a common carrier on land. The public demand certain things from the common carrier, and the contention is that in return legislation should give to the common carrier a certain control over his workmen, in order that he may be able to fulfill the obligations to the public. Of course, the reasoning seems right, but it does not take into consideration that the man is an entity by himself; that under the religious teachings which have at least partly penetrated the civilized world, he is made in the image of God, and therefore can not be made the bondsman of the product of his brain or hand. Under the solemn promise that the United States of America made to itself in entering the sisterhood of States, it can not be done properly here in the United States, because America promised to itself that it would see to it that the principle that all men were born equal and endowed with certain inalienable rights should be the guiding principle of this Republic. It violated it with reference to the African race, and suffered. It violated it with reference to the seamen, and it ceased to have a seaman or any sea power. If it violates it with reference to the railroad men or other workers it is inevitable, gentlemen, that the men who serve in that capacity to-

day, the best of them, will quit their work, and there will be a constant deterioration in the skill, and a constant increase in disasters, until, as in the seamen's case, Congress will be compelled to change the law again so as to bring the right kind of men back into the service of the railroads.

Is there any danger of this strike? A general strike that will tie up everything? Why, the assumption is that the working people are spiritually, morally, and intellectually superior to all the rest of the people in the country. They would have to be if they all could get together in such combination. What have the working people got? Nothing but their labor power. What is it that belongs to the people who come here asking for this kind of legislation? All the means of production—the forests, the mines, the oil wells, the manufacturing establishments, the railroads, and the ships. They are of no value to them, however, unless they can get the labor power that they need, and in proportion as they can get it cheap, it becomes more valuable; and so their self-interest necessarily leads them to come here asking for shackles to put upon the working people, and asking for opportunities to strip the working people of the only defense that they have to-day.

It was thus that in the early feudal ages the people who owned the lands came to the kings and to the parliaments and asked that the people be shackled to the soil. Now, in the new industrial civilization they come and ask that the workmen be shackled to the means of transportation upon which they work. They say they are running the railroads in the interest of the public. Yes; in a sense they are, but they are not running the railroads for their health. They are running the railroads to make money, primarily. Their service to the public is incidental, as has been proven over and over again when Congress was compelled to regulate so that they would not take all of the products of men's toil.

They say you must have this kind of legislation, because a general strike would starve the people. If it were conceivable that there could be a general combination which would stop all traffic, of course that would be partially true; but that is inconceivable—400,000 men on the railroads threatening to quit work unless some grievances are redressed. Railroad employees, perhaps a million and a half of people, and some of the railroad managers themselves say: "Let them strike; we will run the railroads; we will run the trains." A strike that will absolutely tie up the railroads is not conceivable because of the number of men throughout the country who would be willing to go and take the places of those men if, in the general opinion of the public and the general opinion especially of the working people, those men were asking more than they have any reasonable right to ask.

These things automatically adjust themselves. The wages of these men will not rise any higher than the level of the community.

Senator UNDERWOOD. Mr. Furuseth, let me ask you a question right there.

Mr. FURUSETH. Go ahead.

Senator UNDERWOOD. I can understand how you could get a great many men who could be conductors and probably a great many men who could be firemen, but how can you get enough men who could be engineers, who not only must know how to manipulate the engine

and run it but must know the track and the roadbed and the road and the crossings and the red lights before they can carry a train over it in anything approximating schedule time? How could you do it?

Mr. FURUSETH. There is no question but there would be some difficulty in obtaining those men in very large numbers, but that they could be obtained in a sufficient number to keep the business going to some extent there can be no doubt. A strike on the railroads, after all, will not tie up the railroads altogether. It will tie up a certain part of the traffic; it will make traffic difficult. In its essence it is simply a means to compel the railroad managers to grant some redress of grievances, and that is on an absolute parallel with the right of the British House of Commons to stop the wheels of government, theoretically speaking, by refusing supplies. Out of that power of the English Parliament has grown all political democracy, such as we know it: Out of the power of the working people to withhold collectively their labor power until grievances are redressed, or at least so partially redressed that they are willing to go back to work—out of that must come the kind of society that the best in the world have been looking for for ages. It can come in no other way except through the dispute, the haggling, between the interested parties. You say the public. Why, in some instances the public is entirely and absolutely with the strikers. You find it in street car strikes, where for months the people refuse to travel on the cars, at the greatest kind of inconvenience to themselves.

Speak of babies being deprived of milk, why, it is a serious question, Senators, whether there are more babies dying because of the milk they are fed than because of the lack of milk. Interurban cars, automobiles, automobile trucks, conveyances of all kinds are ready at hand to be used in case of a tie-up of the railroads that is very serious; and there is no danger of any very serious need arising, because, when a strike once is on and both sides realize that neither is bluffing, they will be willing to sit down and talk the matter over and come to an agreement, as the Parliament and the King in England came to an agreement over and over again and saved such a condition as arose in the French Revolution.

What is a strike, anyway? Some years ago a committee made up of Volney Foster, of Chicago, the bishop of Peoria, and a coal operator of West Virginia came to Congress with an arbitration bill known as the Volney Foster arbitration bill. It was voluntary in all its phases, and yet it was the most dangerous piece of legislation that ever came into Congress, because it assumed to and would have used the public opinion in such a way as to shackle and destroy all freedom amongst the workers. When this was understood, it was laid aside. It reappeared in the shape of the Townsend bill in the House. It came up on the floor of the House and was defeated, because the membership of the House realized that the strongest force in all the world is public opinion. And now it is coming here in a new shape. Back of all of it there is the deliberate purpose to stop strikes. Why, to stop strikes would be good if you could stop them without taking away human liberty; but the most important of all things, gentlemen, in the world is liberty, freedom. Everything grows in freedom; everything dies in bondage. That is the history of the world—as I have read it, at any rate—and I belong to a class

of people who have suffered so much under this and whose recollections are so new and fresh that we all recognize the shackles no matter how they may be covered by flowers. And so we protest with all the earnestness and sincerity that we possibly can find word for.

The struggle in modern society—

This is from the hearings on that Volney Foster bill—

The struggle in modern society is between industrial absolutism and industrial democracy. The Christian ideal of human equality is seeking to extend itself in upon the industrial field and is meeting a power grown so great that it has to a large extent seized upon the State and is using its power for its own purposes. It controls, in a large measure, the churches through the pew, institutions of learning through endowments, the press through its advertising columns, the education of the young through the school boards; it is expurgating the poets of the past, or suppressing them, through the great publishing houses \* \* \*.

And if such legislation as this is enacted and becomes at all successful, it will seize upon public opinion and use that, and so bar the last gate. What is a strike? When a strike takes place, the public is annoyed, inconvenienced, and more especially so when the strike is in transportation. Its first thought is, "Why don't they settle these differences?" And it blames some walking delegate.

There is a disposition to look upon the whole thing as a nuisance which ought to be suppressed by law. Finding in some way that the strikers have sacrificed their employment and with it the bread of their children, it gradually is prevailed upon to look into the facts, and if by looking it finds that a real injustice is done, that there is a real grievance, then, and not until then, is any sympathy aroused for the strikers.

In all such cases the strikers must first overcome resentment, then inertia, and must then have a cause good enough to convince upon the most casual investigation. Grievances that are not sufficiently simple to be thus easily understood yet serious enough to cause men to risk all to obtain redress are sure to be brushed aside with a contemptuous anger at those who, for no better reasons, are stopping the regular flow of business, to the great inconvenience of the public.

It is a natural inclination on the part of a man who is going to travel from place to place to say, "This thing ought to be stopped," but his convenience should here be measured against the recognition of the freedom of the men who are employed by the railroads; the recognition of the ownership of their own bodies, of the divinity that is in them, according to Scripture—of the citizenship that is in them, according to our own law. Would the public opinion be strong enough, if it were employed as contemplated in one of these bills?

It was this force which made it possible for the Roman Emperors to slay Christians by the millions, and which, changing around, made Constantine the first of the Christian Emperors. It kept the Roman arena as a festival, yet abolished it after the self-sacrifice of Telemachus. It supported and was the strength of the spiritual power which compelled the Emperor of the Holy Roman Empire to debase himself at Canosa; it made possible the imprisonment of the pontiff in France. While the temporal and spiritual powers were apart, it permitted the guilds to grow, and, when together, they were killed by legislation. It sent the populace to the auto-da-fé as to a festival, and later crowned with oak leaves the champions of freedom of conscience. It made possible the success of the revolution of the American Colonies; it burnt the witches at Salem. It deprived the Negro of his humanity, and later poured out seas of blood and untold wealth to reestablish it. It gave force and effect to the emancipation proclamation and wrote into the Constitution the thirteenth amendment.

It sent the Nazarene to the scaffold, and, later on, recognizing His divinity, made of that scaffold a sacred emblem. It is the spiritual force, when guided by men, known as the spiritual power.

They quote the decision in *Robertson v. Baldwin* when they come here, and they are not treating this committee right, because they are not quoting the decision properly. They are taking it away from its context. I simply want to call attention to that, in order that you gentlemen may look at it.

The Supreme Court does not say that the employment, voluntarily entered into, always remains voluntary. It puts the question, and then it argues it out to some extent, and it leaves it there; and then it says, in substance: But if there is a division to be drawn anywhere, it is reasonable to draw it at the seamen; and so they held that the seamen were subject to it, and that the law making the seaman a chattel was constitutional.

But the Supreme Court has since dealt with the thirteenth amendment and has construed it again, and in *Bailey v. Alabama* they say:

The words "involuntary servitude" have a larger meaning than slavery, and the thirteenth amendment prohibited all control by coercion of the personal service of one man for the benefit of another.

Senator BRANDEGEE. What volume is that in?

Mr. FURUSETH. That is in 219 U. S., page 219.

Senator CUMMINS. Mr. Furuseth, in the seamen's case there was no consideration of a combined, concerted cessation of work. The Supreme Court held there that the principle which is invoked here for combination could be applied to the individual, did it not?

Mr. FURUSETH. In section 4596 of the Revised Statutes, in which that distinction was withdrawn, a combination was provided for and a year was the penalty.

Senator CUMMINS. But the Supreme Court did not put its decision on the ground that there had been a concerted action on the part of the seamen. There the principle was applied to the individual and the individual action, was it not?

Mr. FURUSETH. Yes. It was so applied collectively, though, as far as a crew of men on board of a vessel was concerned. There may be 200 of them, or 20, or 10.

Senator CUMMINS. Precisely.

Mr. FURUSETH. But the whole crew of the vessel was involved.

Senator CUMMINS. But what I mean to say is this, that those who use the decision of the Supreme Court in the seamen's case as an argument for the legislation that is proposed here logically contend that we ought to make it unlawful for an individual to quit work, even though he has no concert at all with his fellow workers. That is true, is it not?

Mr. FURUSETH. Yes.

Senator CUMMINS. Well, I wondered why that distinction was not made here by those who presented the Supreme Court case.

Mr. FURUSETH. I presume that they all assumed that you gentlemen would look at the case for yourselves, and that that distinction would readily occur to you. That was my idea, at any rate.

Now, with reference to a man's right to quit as an individual, which is of the most supreme importance to that individual, because there is a difference in feeling that I belong to myself and feeling that I belong to somebody else. But individual freedom that stops short of the individual's rights or the right of individuals to come together for mutual protection and the advancement of their interests denies one of the fundamental facts in the world, in the

animal world. The gregarious animals, the horned cattle on the plains, keep together. When the wolves come around they get the calves on the inside, the cows next, and the bulls, with the business end to the wolf, on the outside, and then they protect themselves in that way. Now, take away from the individual the right of combination, the right to do what the Scripture says we must do, namely, to bear each other's burdens, take that away and the individual is as helpless as the merest calf on the prairie. To deny to the individual the right of combination is to deny his right to the protection which comes from mutual aid and to tell him to isolate himself from his kind and become a Robinson Crusoe. That can not be the meaning of individual freedom.

The CHAIRMAN. Would not that apply, Mr. Furuseth, as well to business as to labor? Can not that principle prevent all the legislation that relates to combinations for monopolistic purposes in trade?

Mr. FURUSETH. I do not look upon it that way, Senator. What you have been doing in the antitrust laws, or what was intended to be done, was to govern and control the products of labor, not the labor power in man. If some men could get—whether it be one man or many men—could get control of the products of labor in some way, why, of course, it would be within his or their power, society permitting him, to destroy the rest of society, and so you prevented a monopoly in the products of labor.

The CHAIRMAN. But may there not be such a combination of individuals with reference to labor as to destroy or seriously injure society?

Mr. FURUSETH. That would presume, first, that the—I did not catch that question right.

The CHAIRMAN. I say, would it not be possible to form such a combination of labor as to destroy or seriously injure society, such as by the absolute paralysis of the transportation of all the things that are essential to life and to health and to comfort?

Mr. FURUSETH. That would not be possible, first, because the individual man has a stomach, has got to be fed. The average man has got wife and children that must be fed, and when he quits employment he has no means of feeding himself, feeding his wife and children, and the strongest of all human sentiments stands as a bar to any such combination such as the one you have in mind. I have not the faintest fear of any such thing. My fear is that the power of men to do these things, in the aggregate, may be taken away and thus destroy in them all hope, and in society all power of advancement.

They said, "The seamen will surely quit the vessels and tie up commerce." They said that in 1898, when what we called the White Act—from Senator White—was passed. Nothing of the kind happened. There was less trouble in shipping after the passage of the act than there had been before. They said, "The seamen will surely quit their vessels in every port," and the reports year by year of the Commissioner of Navigation show that the desertions are decreasing. Man must eat. In order to eat he must labor; in order to labor he must find some place to apply his labor power; and in quitting his work with a big corporation, like the Pennsylvania Railroad, he is a marked man throughout the whole country, and he takes the chance not only of losing his little investment in his little home that is half

paid for, but in the breaking up of his family, the hunger of his wife, the starvation of his children, and the making of himself a hobo. All this is involved in the quitting of work collectively, Senator, and so men, who have really lived in this kind of condition that is here contemplated, who have studied it, and who have felt these things, have no fear of freedom. What we fear is bondage. If you take away from men the right of collective action, you take away from them all hope, you take away from them all power to advance, and you leave them naked and bound in the power of the wolf, as you would leave a bound calf on the prairie.

The CHAIRMAN. Well, Mr. Furuseth, I share with you your desire for liberty, and for individual liberty and the right of the people having a common interest to think and act collectively in that interest, but the difficulty that this question presents is this, that the brotherhoods which practically monopolize the labor, or embrace the labor that is employed in the operation of trains, in the first place, have organized, as I understand it, a very large fund which could be drawn upon for a considerable period, for the support of the men in a strike; certainly a sum sufficient to support them, with the aid of other labor organizations, possibly until the communities affected would suffer very seriously. Now, I think we all wish to substitute, as far as we can, reason for force, for the determination of these disputes, and we all realize that public opinion has much to do with the adjustment of these disputes, but I should hesitate very much to trust to a public opinion that is driven to a conclusion by starvation, for instance, or by a paralysis of trade and of transportation.

Now, what we are endeavoring to do is to secure a period during which reason can act, during which facts can be ascertained, the public informed, as well as the men in the striking forces themselves, who may sometimes be led away by intemperate leaders. Now, do you mean to say that any measure that is calculated to give this period of quiet and of rest during which reason can operate can be regarded in a civilized society as an undue restraint upon the liberty or action of the individual?

Mr. FURUSETH. Yes.

The CHAIRMAN. Particularly where no effort is made whatever to prevent the individual from striking, but the effort is simply to prevent them from so combining as to effectuate a practical paralysis of one of society's operations, transportation?

Mr. FURUSETH. There is no way of redressing grievances except by the power of producing that paralysis. Take away the power to produce that paralysis, and you have taken away the power that will compel the railway operators, or the railroad operators, to listen to either the public or to the men.

The CHAIRMAN. Your contention, then, practically, is that in disputes between labor and capital you must leave open ultimately a resort to force, in order to accomplish results?

Mr. FURUSETH. No; not force, not force. Leave open the road to the use of the only weapon that in a civilized society every man may use, the power to isolate for the time being the wrongdoer.

The CHAIRMAN. Yes, but in this case you not only isolate the wrongdoer, but you isolate society at large from all means of intercommunication and the carriage of things that are essential to life.

Mr. FURUSETH. If it was possible, Senator, to bring about such a strike as you have in mind, that would stop all the railroads; if it was possible to get a combination of men that could bring that about, there might be then some foundation for the fear that is in you. But that kind of combination can not be made, in the conflicting interests and in the conflicting sentiments, and when you have got a lot of men to combat it.

The CHAIRMAN. But the assumption of these great brotherhoods is that such a combination can be made. Their assumption is that these 400,000 men can at a moment of time strike; their assumption is that they can, by persuasion at least, prevent others from taking their places; their assumption is that the outsiders are not sufficiently trained, as Senator Underwood suggests, to operate these trains, as the engineers are, and they assume that society will be brought into such distress as to force the employers to yield. Now, you say that is impossible of accomplishment?

Mr. FURUSETH. I do.

The CHAIRMAN. But their purpose is to accomplish it, is it not?

Mr. FURUSETH. They may speak of those things, but in their sober moments—and men are sober when they are risking their all collectively—in their sober moments they perfectly well know that all this assumption is nothing but a hope. There will be a sufficient stoppage of business, unquestionably, to compel the railroad managers to grant a redress of grievances to some extent, sufficiently to bring the men back to work; but aside from that there is always a period of time between the time that the workman submits his request—his petition, if you please—to the employer and the time that he leaves work collectively; there is an opportunity for discussion, for meeting, for collective bargaining. The opportunity is there, and the opportunity is very materially strengthened by the legislation, part of which, I think, goes too far, because I do not believe that an award should be registered in court, and be subject in any way to an enforcement by a court. I believe that is a blot upon that legislation.

The CHAIRMAN. You think that interferes with the liberty of the workers?

Mr. FURUSETH. I think so; and I do not believe, and I have searched through every bit of record that I could get hold of, and I have not been able to find that compulsion ever did any good to anybody, except temporarily. The English "statute of laborers" ran for six centuries, and under its operation had on one side the vocal employer of labor, and on the other the dumb workers; on one side the possible evidence of books being produced in the court to show that he could not afford to pay any more, and on the other side the flexible standard of living, and the threat from the employer that if he is not getting fair consideration, he will quit altogether. He would say this, and thus threaten the party on the other side with starvation. What will your judge or your committee or your board do under such circumstances? The higher their human qualities and the tenderer their hearts, the worse the worker will suffer, and that is just what took place during the operation for six centuries of the statute of laborers in England. In order to save the population, in order to stop the deterioration, the British Government had to step in and stop the whole thing, and they restored



at least partial freedom. Of course, the courts came in with their theory of conspiracy and all that truck, and prevented men from combining to help themselves, and so they had to pass the trades-union acts, and the court stepped in again and they had to amend the trades-union acts so as to preserve freedom. And with what result to the organized workers of England? Are they complaining because they are working night and day making shells and arms at home, and staying in the trenches abroad? Oh, no. They feel that the Government has been treating them in somewhat of a decent way, and they fight for their homes. Men will not fight, they say, for a boarding house, and surely they will not fight to preserve their prison.

THE CHAIRMAN. There is no doubt, Mr. Furuseth, that in the history of the world there has been enacted very much injudicious legislation upon this subject, but I am sure there is no disposition upon the part of any legislator here, whether radical, progressive, or conservative, to oppress labor or to deny individual liberty. The question we have before us is the protection of society itself, the protection of the great public against the great calamity that is threatened, a calamity which the workers assume will take place, but which you say is impossible. Now, we are brought face to face with this condition in New England, for instance. Three-fourths of the things they consume and use, consume for supplies, and use in production there, come from the outside, and a stoppage of transportation for a few days would put that vast population into a condition of suffering and distress. Now, we are endeavoring not to deny the laborers their freedom, their liberty of action, or their power of combination, but we are endeavoring to find some method by which we can protect society itself, the great public, the innocent public, from a calamity such as is threatened, and which these labor organizations assume it is necessary to threaten in order to get justice. Now, we all realize that none of us want to return to the old conditions of barbarism, where every man fought for his rights, and, as described the other day by one of the representatives of the brotherhoods, where the cave men fought over the bone. We have gradually introduced a system of civilized law under which force is practically eliminated, and reason substituted for force, and tribunals created for the adjustment of all disputes between man and man. Now, do you mean to say that it is not possible for society to create in some way such a tribunal with reference to disputes between labor and capital, that will enable it to protect itself against calamities arising from their disputes? Does the freedom of the laboring man absolutely depend upon our giving him the privilege to paralyze society and to starve society? That is the question that is before us, and we approach it with the strongest desire and hope to protect every right that a working man has. We fully appreciate all that you have said with reference to the importance of preserving those rights.

MR. FURUSETH. I feel, Senator, that you do, and that is what has given me the courage to come here and speak as I have spoken. But you are presuming here, or speaking, I should say, of reason versus force. It is not force when men withdraw their labor. It is absolute peace, and if as a result of that, with which the policeman and

the military has nothing to do—if, as a result of that, a condition of some people, the public, so called, for the time being, for a short period of time, should be caused to do without some of the conveniences that they have in everyday life, have you not got to measure that inconvenience upon the one side against the denial of freedom on the other; the hope in the one versus the fear of the other?

I do not believe, and there is no evidence anywhere that would induce me to believe, these claims. There is no real evidence that can induce any real serious man to believe in an actual tie-up of all transportation. Why, you had one railroad strike in 1877, where there was no organization amongst the men, to speak of; you had another one on the C., B. & Q. in 1888, on one railroad, the C., B. & Q.; you had another in 1894, the so-called Debs strike, that has been spoken of here so much; and since that you have had—

The CHAIRMAN. But there never has been so perfect and thorough an organization and combination of the men as has been accomplished recently.

Mr. FURUSETH. Which is the greatest guaranty that you can have against a strike.

The CHAIRMAN. Why do you think so?

Mr. FURUSETH. Because the employer knows that there is a great force on the other side with which he has to deal, and that compels him to think twice before he undertakes certain things. The whole history of the labor movement for the last 50 years proves that as organizations grow strikes become less, and they become less serious, less violent. It is the striking of men that are not organized that expresses itself in riot, force, and bloodshed. It is the feeling of the man who feels himself to be a bondsman and who can not use a free-man's weapon that expresses itself by dynamite, by the burning of hayricks, or by ultimately going on the field of battle to secure the thing, or to die. Railroad men say you can not have eight hours, you can not have eight hours' labor because we can not afford to pay you in proportion to it, we can not afford to. You must work, continue to labor, because it is necessary. The old cry of necessity, the justification for all the slavery and all the bondage that the world has known. On one side, the house of have, pleading for shackles; on the other side, the house of want, struggling, hoping, praying for better conditions. That the legislators to-day here in the United States and here in this Capitol have no disposition to rob the men of their freedom, I, of all men, must recognize, because they have given to me and my people—the people to whom I belong—the freedom that was denied us for seven centuries, and it is that same feeling of compassion that expressed itself in the freeing of the seamen that some gentleman here is playing upon to shackle the railroad men, and they bring forward the dangers to the people to that end.

Those dangers are not real. They are not real enough to cause a serious consideration of the question, and so a gradual establishment of better relations, by meeting of the two bodies and the bringing about, if you please, an ultimate industrial democracy that the world is looking toward. They are serious enough for that, but that the railroad men are insane enough to think that they could tie up the transportation of this country completely, why, I do not believe for a minute, and the men who come here pleading for this legislation, I do not believe that they believe it. They are, as usual, overstating

their case, and I hope and trust that the most serious consideration will be given to this, because you are on the divide. On one side of the divide is the transportation question, with bondage which will end nowhere except in the bondage of all the men who toil; on the other side of the divide is the freedom of all, with the mutual contest of interests and the struggle to better conditions, out of which has grown everything that the world has given that is worth keeping.

The CHAIRMAN. Well, Mr. Furuseth, you minimize the danger of a general paralysis of transportation resulting from a strike. You said, however, that it does create a fear upon the part of the employers which compels them to listen to reason upon the subject.

Mr. FURUSETH. Yes.

The CHAIRMAN. But may it not go further than that, and compel them to yield beyond what reason would require? Is it not quite possible that such a large and powerful organization as you describe may make an unreasonable demand upon the employers, and that this threat of a strike will have the effect upon them of compelling them to yield to that demand, and that demand will be reflected in an increase of rates to the general public which is concerned, and an unjust imposition upon them? Is not that possible?

Mr. FURUSETH. Almost everything is possible, almost everything is possible, but—

The CHAIRMAN. You would not claim infallibility always for the labor organization?

Mr. FURUSETH. Certainly not.

The CHAIRMAN. They are just as human as other people are?

Mr. FURUSETH. Certainly. It is conceivable that they might think at times that they can do these things, but when they get to trying it, they will be swiftly up against the flowing-in of labor from everywhere.

The CHAIRMAN. Now, just upon that point, I think it is generally recognized that the chief danger of strikes does not arise from the stoppage of work by the workers employed in a particular industry, but arises from the disorder that is likely to arise later on when other workers outside seek to take their places. They are certainly subjected to persuasion by the striking workers, and sometimes they are subjected to intimidation, and they are generally put under contempt, which has an effect upon many. In addition to that, you realize that at such times the vicious and disorderly, particularly in the large cities, seize such opportunities to break out into actual violence, for which the striking workers are themselves not responsible, and that oftentimes such a strike is carried in violence away beyond the contemplation of the original striking workers? Now, how would you meet conditions of that kind?

Mr. FURUSETH. By giving to the workers absolutely the same rights of appeal to the man who may take his place, as the employer has, by giving to the worker the same right to intimidate, using the word in the sense that the employer uses it. The employer says to the workmen, "If you do not work for me to-day, you will never work for me again." That is surely intimidation upon the same line as the laborer, who says, "If you go to work now, I will never recognize you as a man and a brother again." After all, these things are on a mental plane, and when there is freedom of appeal by the employer to a man to come and take the place of the striker, and the

freedom of appeal on the part of the striker to persuade men, not to take his place, then the man who may take his place is free, is a free man, and if he then chooses to take the place, that is his right, and society must protect him in that right.

The CHAIRMAN. You would protect, then, the so-called strike breaker in his right to take the—

Mr. FURUSETH. I unquestionably would. I would protect him. When he has decided to go to work, I would protect him. I would not use the courts and the equity power by making it into policeman's club. I would use the peace officers of the community for that purpose, to preserve the peace, and if they were not sufficient, then whatever other means for the preservation of peace that are to be found in every organized State. A man has a right to go to work if he wants to and somebody wants to employ him. If he has listened to the plea of his fellow workmen, and has turned it down, he has the right to go to work; if he has listened to the plea of his employer and has turned that down, he has the right to refuse to go to work, because he is a man with an individual soul, the image of his Maker, just the same as the employer is.

The CHAIRMAN. That is undoubted, I think; but, to go a step further—

Mr. FURUSETH. Now, with reference to the criminal element that you speak of, it comes into play, because in 99 cases out of 100 the court has interfered or because somebody has used the intervention of force, so that the one man could not go peaceably and speak to another man. I personally have been arrested for speaking to a man and asking him not to go to work, when God knows I was as peaceable and had as much peace in my mind as if I had been in a church. Those things come because, whether we like to believe it or not, they are two classes in society—the employing class that has the means of production and the working class that has not anything but its labor power. The struggle between these classes, the house of have, with all the fear that arises from a bad conscience, and the house of want, with all the desire that comes from the miseries of ages past—that struggle you can not avoid except by killing society itself. Every nation that has sought to avoid it and has passed legislation to avoid it has itself suffered the most terrible penalties because of such legislation.

The CHAIRMAN. I understand you, then, Mr. Furuseth, to contend that the worker in the organization has the right to quit, and it is the right of any worker outside of that organization to take his place?

Mr. FURUSETH. Absolutely the same right; no more and no less.

The CHAIRMAN. And that one is protected as much as the other?

Mr. FURUSETH. Certainly.

The CHAIRMAN. And that if there is any violence it is to be taken care of by the police laws of the various States. You realize, do you not, that interstate transportation now involves about 85 per cent of the total amount of transportation in the country, and that by reason of that fact the National Government has been legislating regarding interstate transportation and protecting it? What would be your view with reference to a law which would protect trains moving in interstate transportation as we now protect the mails from any obstruction and punishing such obstruction by fine and imprisonment.

Mr. FURUSETH. It would depend entirely on what you mean by "obstruction."

The CHAIRMAN. It would depend on that?

Mr. FURUSETH. If it was physical obstruction, I think there are laws to punish it now. If it means obstruction in the matter of refusing to labor, it is simply a side swipe.

The CHAIRMAN. I am not referring to that now. I am referring now to the actual, willful obstruction of the trains.

Mr. FURUSETH. The physical obstruction of trains, the stopping of trains from going by piling something on the track, or something of that description?

The CHAIRMAN. Anything—

Mr. FURUSETH. Anything that is an actual, physical obstruction, that will prevent the trains from passing along?

The CHAIRMAN. Yes.

Mr. FURUSETH. If there is no law to prevent that, I think there ought to be; but I think there is.

The CHAIRMAN. Would you punish in that way any movement to prevent the operatives of a train moving in interstate commerce, and who are desirous of moving that train, not of giving up their employment—would you justify a law of the United States Government with reference to that?

Mr. FURUSETH. By quitting work their purpose is to delay the movement of trains. They can not bring the employer to listen unless they can do that. Therefore, the stopping of trains for the time being, through the refusal of labor, I think is absolutely legitimate and proper.

The CHAIRMAN. Now, admitting that, does the right go any farther than that, and ought we by law to prevent action that would obstruct the moving of trains beyond the action which results from the willing abandonment of the occupation by the operatives?

Mr. FURUSETH. I do not quite catch the meaning of that.

The CHAIRMAN. Perhaps I do not make myself clear. Do you contend, so far as the operation of trains is concerned which results from voluntary cessation of work by the employees on those trains, that there should be no law against that?

Mr. FURUSETH. That is correct.

The CHAIRMAN. Now, when it goes beyond that, and there is an attempt made to prevent trains ready and equipped for transportation for moving in transportation, would you regard that as an offense which should be punished by the law?

Mr. FURUSETH. If the train had left its station—I mean its division point where the train crew is taken on—and that train crew had gone on that train and started to take it out, I do not believe that they should be permitted to quit that train until they had brought it to the next division point. To quit in between somewhere, leaving the train on the track, would be very analogous to a seaman refusing duty at sea. It would be destructive of human life. It would be analogous to another thing that might happen. Suppose two men were digging a well, and one man was at the bottom of the well and the other man with a winch hoisting up the dirt. The man on top could not possibly leave the man below and go away without endangering his life. Nor could a train crew leave a train—I never heard of any such thing anywhere—out on the single track prairie,

elpless. It would be a most remarkable thing. It is the deliberate risking of human life. But beyond that, as far as the men are concerned, if you go beyond that you take away, as I have said, from the men all hope and all power of resistance and of continuing in the struggle for life.

Now, with reference to tearing up tracks or doing anything physical to stop the train, surely there must be laws in the different States against it, because when a train comes along and she runs in there and there is wreck and loss of life it would seem to me that that would be very much akin to endeavor to commit murder. I do not know that it is; I have never given any attention to it, because I would not dream of coming before you and suggesting that somebody should have, or for a minute think of having, a right to put a physical obstruction on a railway track.

The CHAIRMAN. But suppose there were other obstructions that were equally effective, at the division point, for instance—a crowd gathering around the station, threatening the men engaged on the train if they moved the train. Would you regard such an obstruction of interstate transportation as an offense against the public?

Mr. FURUSETH. That kind of an obstruction comes too near to something else. Who is going to determine whether that is simply a crowd brought thereby the employers themselves, or whether it is a crowd that has come there in sympathy with the strike? If they are undertaking to prevent the train from going out, by preventing willing men from going to the train to take it out, then they are interfering with those men's right to work. As far as appealing to them is concerned, they have a right to do that, and should have it.

The CHAIRMAN. And you would regard that as an offense against society?

Mr. FURUSETH. To physically assault any man because he was going to work in a certain place, yes; certainly. It is an offense primarily against that individual citizen.

The CHAIRMAN. Then you think that would justify Federal legislation upon that subject?

Mr. FURUSETH. I do not know that it is necessary.

The CHAIRMAN. What do you mean by "necessary"?

Mr. FURUSETH. I have never heard of any instances in which this thing was necessary at all. Of course, if such legislation is not already enacted by the States and it is necessary to have legislation for that purpose enacted by the Federal Government, then the legislation ought to be enacted. Now, you are leading me into a question of law that is outside of my seamen affair, and I do not know where you are going to drop me, by and by; and I ask you not to carry me so far. You are carrying me out of my depth.

The CHAIRMAN. My observation, Mr. Furuseth, is that you are a very good lawyer. I am sure you are credited with capacity in that direction by the various committees before which you have appeared.

Mr. FURUSETH. Whenever I have gone before any body it has always been on the question of the seamen, because I have spent some 40 years of my life studying that, and also on the question of the use of injunctions, and I have spent some 20 years studying that, because equity law was of the same stripe. But you are now taking me into deep water, and I am afraid I may drown, Senator. [Laughter.]

The CHAIRMAN. Are there any other questions that members of the committee would like to ask?

Senator UNDERWOOD. I would like to ask a few questions. Do you approve of the laws that are now on the statute books authorizing the Interstate Commerce Commission to fix reasonable rates for the transportation of commerce?

Mr. FURUSETH. Yes.

Senator UNDERWOOD. You recognize the fact in your statement that the natural inclination of the employer is to get his work done as cheaply as possible, and that the natural inclination of labor is to get as high a price as he can for his services. Of course, there is a point where fixing the hours of labor and the rate of wage may make a very great burden on commerce; you recognize that. It could be done theoretically.

Mr. FURUSETH. Theoretically there is such a thing; I know that.

Senator UNDERWOOD. Then, if that is the case, in the settlement of these disputes, if it is recognized that the public commerce ought to be carried at reasonable rates, don't you think that the public are entitled to some voice in the matter?

Mr. FURUSETH. Yes.

Senator UNDERWOOD. Then you would favor a tribunal or a court where there was no compulsion, but where the public might be represented as well as the men and the railroads in fixing the proposition?

Mr. FURUSETH. In a way, yes. Now, dealing with the question of the public in this question between labor and capital or between the workingmen and their employers, it has been said in my hearing once—it was said by Senator Hanna—that here is no such thing as a neutral; he is on one side or the other. But, be that as it may, the public, the great mass of the people, certainly must have ultimately, whether anybody likes it or not, the controlling force in all these things. It is the question how the public is going to use it and how it is going to approach it.

Senator UNDERWOOD. But in a just decision that was likely to stand ultimately you recognize the fact that the voice of the public as to what is a reasonable rate for transportation and what burdens commerce shall bear should have an opportunity to be heard?

Mr. FURUSETH. Certainly. There is always a danger in this also: A tribunal that is erected or established for the purpose of doing justice to everybody, but particularly to the public—justice to the employer and the employee, but particularly to the public—such a tribunal would be, of course, a wonderful thing. But there is danger, very grave danger, in such a tribunal. They are in a position in which they can take public opinion and draw it, just as you draw sunlight through a prism. Sunlight diffused is healthy and life-giving, purifying; so is public opinion when it is free and expressive of the spirituality of the individual. But if you concentrate it in some way, it may do just as the sun does when its rays are concentrated into a prism—burn the things that it touches into cinders. Now, I am afraid of that kind of a tribunal. If a tribunal of that description could be placed high enough and its decisions would have great enough influence to really and seriously affect the conditions, then those men would be almost equal to gods; but I am afraid that they would not be gods; that they would be using their power, involuntarily perhaps, in a way in which it ought not to be used.

Senator UNDERWOOD. You assume that a tribunal of this kind might be prejudiced on the one side or the other?

Mr. FURUSETH. Yes, sir.

Senator UNDERWOOD. And in its prejudice it would throw the light that would make the public misjudge the real conditions?

Mr. FURUSETH. That is it.

Senator UNDERWOOD. I see your point. But you state that you think it is good for the body politic, and is proper, that in this question of transportation the public should be represented where its voice can be heard. Of course, that applies to labor as well as it does to capital, and, of course, an undue charge for transportation must in the end burden labor somewhere along the line as well as burden capital. It is more likely to fall on labor than on capital. Now, that being the case, you say that you can not appoint a tribunal on which the public will be represented. How are you going to reach the situation?

Mr. FURUSETH. You have a tribunal of conciliation now. As I have already stated, to the extent of making recommendations and trying to get the people together, that is perfectly proper, and I think that is as far as you can go safely.

Senator UNDERWOOD. But the public is not represented on that board?

Mr. FURUSETH. The public is in the very control, I think, of the whole tribunal. It represents the public, because they are conciliators, or arbitrators, or whatever they may be called. They represent the public, because, after all, the railroads come to them with their side and the workmen come to them with their side. They are appointed by the political power, representing the public, and my conception of them is that they would necessarily think of themselves as representing the public and think of themselves as having one primary duty beyond all other duties, and that is to keep things going.

Senator UNDERWOOD. But the board of conciliation is appointed outside of a dispute; but the board of arbitration that follows it, the voluntary arbitration, is representative of the two contending parties, not the public. But even the parties themselves might agree to a proposition that would involve a very great burden.

Mr. FURUSETH. Congress would have the power to correct that at any time when it really exists.

Senator UNDERWOOD. But you recognize that Congress can not stop and pass laws to correct every individual case. It must be a general law.

Mr. FURUSETH. Certainly. It could correct it when it shows a tendency to be in that direction.

Senator UNDERWOOD. Mr. Furuseth, I have introduced a bill on this question, and I would like to read it to you, because I want your opinion.



(The bill read is as follows:)  
 Senator UNDERWOOD (reading):

[S. 7031, Sixty-fourth Congress, second session.]

A BILL To give the Interstate Commerce Commission the power to fix the hours of labor and determine wages for employees of carriers engaged in interstate and foreign commerce.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Commission shall have the power to fix the hours of labor and determine a just and reasonable wage for all employees who are now or may hereafter be employed by any common carrier which is now or may hereafter be actually engaged in the transportation of persons or property by rail from any State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and which is subject to the provisions of the act of February fourth, eighteen hundred and eighty-seven, entitled "An act to regulate commerce," as amended, except railroads independently owned and operated not exceeding one hundred miles in length: Provided, That the foregoing exception shall not apply to railroads though less than one hundred miles in length whose principal business is leasing or furnishing terminal or transfer facilities to other railroads, or are themselves engaged in transfers of freight between railroads or between railroads and industrial plants.*

SEC. 2. That the rate of wages and the hours of labor provided for in this act shall remain fixed for service and pay until changed by the decision of the Interstate Commerce Commission, which, within a period of not less than six nor more than twelve months from the passage of this act, shall determine what are just and reasonable wages and what shall be the hours of labor for all employees of the railroads above mentioned.

SEC. 3. That the Interstate Commerce Commission shall have the power from time to time to change the hours of labor and the rate of wages for all employees of the railroads named in section one of this act, either in whole or in part, upon its own initiative on the petition of the employees, the managers of the railroads, or the public.

You see that that gives to the same tribunal that fixes the rates of transportation for freight and passengers the initial right—taking away the initial right of the railroad directors or railroad owners—to fix the hours of labor and the rates of wage. But there is nothing coercive in this. There is nothing here to prevent a man from striking if he wants to quit work, individually or collectively. The only question is as to whether, after he has presented his petition and his case to the tribunal and gotten an adverse decision, the effect of that decision would be such as to prevent him from going further. That is the only coercion in the bill.

Mr. FURUSETH. That is to say, putting it in the language used here: "This commission will apply to industrial disputes, as it understands them, the religious and moral principles as understood by it."

Senator ROBINSON. What is that you are reading from?

Mr. FURUSETH. It is a book that contains some documents of the Committee on Labor.

Senator ROBINSON. No; but the particular document that you are reading from?

Mr. FURUSETH. The particular thing I am reading from is a very carefully prepared talk that I made in 1904 on the question of the Volney Foster arbitration bill, and I got the language there in such a way that I felt I could not improve upon it.

Senator UNDERWOOD. This is not an arbitration bill, you understand.

Mr. FURUSETH. No. This takes away from the railroad men and the employers both the right to determine hours and wages. In other words, it is just like the quarter sessions in England. Now, it may

be that that is the best that could be done, if anything has to be done; but, like the quarter session judges, the Interstate Commerce Commission, after all, moves in a certain sphere of society. It is appointed in a certain way; it is subject to certain influences, nothing of which has any taste of the actual life of the man who runs the train or who does the work. And so I am afraid that his sympathies will unconsciously cause him to write into his decisions—I am now speaking of the commission as a person—something bad for the train operation of the railroad, beginning with something bad for the men that are operating the trains. It is not the same as the men working with the mails. Congress sets their wages, and when they agree to do certain work they know what wages they are going to get. They know what hours of labor they will have to work when they go into this work, and if they are not satisfied they have the appeal to their direct Representative in the House of Representatives and in the Senate. An appeal to the commission, I am afraid, would not be just the same, Senator. So, while this bill might help—unquestionably, I think, would help—to prevent strikes, it would not prevent them, of course, altogether. Nothing could do that under the existing conditions. But I am afraid that the commission would be put in a position of having such a tremendous power that it would be worth while for a large number of very influential people to “get,” as the street puts it, the commission.

Senator POINDEXTER. Mr. Furuseth, how do you feel toward Government ownership and Government operation of the roads?

Mr. FURUSETH. Well, if the railroads are so important as they are said to be, and it is so fundamental as it is claimed, it is a strange thing that the private parties should be permitted to handle them at all. From a theoretical point of view I should be for Government ownership; but even there I want to preserve the right of the men.

Senator POINDEXTER. If you had Government ownership, then, it would be operated very much like the Post Office Department is now, entirely under the control of the Government, and the Government would fix the hours of labor and the wages.

Mr. FURUSETH. The probabilities are that you would have no strikes, or very few strikes, if any, if there were Government ownership. Whether that would make the railroads more efficient is another question that I do not know anything about. I am speaking about it just from a theoretical point of view, as being a power of taxation vested in certain people that you have to control anyway, in one way or another, and the question is whether it would not be better to control it altogether.

Senator UNDERWOOD. Now, just pursuing this proposition a step further, of course, you know that one of the members of the Interstate Commerce Commission was formerly the head of one of these railroad brotherhoods and represents them on that commission. There might be others appointed. But, of course, I am assuming that if this bill went through the membership of the commission would be increased, and the men would have a fair representation on the commission, which I think would happen.

But what I want to say is this: You have stated, and very fairly stated, that you do not think the men's liberties ought to be taken away from them, but that the men, on the other hand, have no right to exercise force to carry out their wishes. Now, that being the case,

to-day their wages are primarily fixed by an interested body, by a body of men who either have got their own money in the proposition or represent somebody else's money that is affected by that scale.

This bill proposes to transfer from that body of directors who make the wage scale to-day to a disinterested tribunal appointed by the Government, the right of the men at any time to petition for a higher wage, or for other hours, or for the public to petition, for it to be settled by that tribunal without in any way affecting their right to quit work. Now, do you not think that is a fairer proposition, from the men's standpoint, if they are not to use force, and there is no force in it, than it is to leave them to combat this proposition with the interested parties? And then, coming back to the main proposition, is it not very much fairer that when this question is to be determined and be a charge on the commerce of all the country that this tribunal which is now charged with fixing the rates of transportation should have an opportunity to take the public's side into consideration?

Mr. FURUSETH. The very fact that they have a right to fix the rates of transportation would, in my opinion, make them rather a dangerous commission on the question of fixing hours and wages.

Senator UNDERWOOD. Why?

Mr. FURUSETH. Because I think there would be an inevitable drift toward long hours and low wages, in order to hold down operating cost.

Senator UNDERWOOD. In other words, you think a tribunal would be so influenced by the public that its tendency would be to reduce wages and lengthen hours of labor, because it was to the public's interest that it should be done; that is your idea?

Mr. FURUSETH. Well, there is some danger of that, you know. You know public opinion burned witches once.

Senator UNDERWOOD. I know. Now, Mr. Furuseth, let me ask you if you can sustain that proposition. The people here in Congress represent the public as much as the Interstate Commerce Commission.

Mr. FURUSETH. Much more so, and more directly so. The one is a commission and the other is directly elected. One is a species of Russian Government and the other is an American Government.

Senator UNDERWOOD. Now, when you appealed yourself to these people who represent the public to adjust the rights of the sailors, and that adjustment meant better wages and better conditions, the very thing that is involved here, you found that the agents and representatives of the public were responsive to your requests or demands?

Mr. FURUSETH. Yes; but we had prior to that appealed to the admiralty courts, which would be very similar to the commission in question, and they had invariably turned us down, and we had to come to the direct representatives of the people in order to get relief.

Senator UNDERWOOD. But is that a fair statement of it? The admiralty courts did not have the right to fix the wage. They did not have the right to fix the hours of labor.

Mr. FURUSETH. They had a right to do other things through which that was indirectly done.

Senator UNDERWOOD. I know; but the admiralty courts in the sailor question were not delegated with the power of making up what they considered a fair and reasonable wage and what they con-

sidered reasonable hours of labor. That burden did not rest on them.

Mr. FURUSETH. No; that is true.

Senator UNDERWOOD. In this case this responsibility is placed on the commission. Of course, I recognize that a tribunal of that kind is not going to grant unreasonable wages or insist on unreasonably short hours, because the public would not favor it.

Mr. FURUSETH. It will arrive in some way at what we call the reasonable wages and the reasonable hours. Now, coming before that commission on this question will be, on one side, the employer, with his books, showing that there is a line beyond which he can not go—the cost is so much—and he can not afford to pay any more wages or give any shorter hours.

Senator UNDERWOOD. No; but let me interrupt you right there. On the other hand, it is the question of the wage earner, but in this equation you are overlooking the fact that that does not operate in this case, because the public, freight and passenger, pays for all the costs of a railroad. The very men here that are given the power to fix the wage, if they think it ought to be raised, have the power to raise the rates, and it is not a question as to whether the railroad can pay it or not, or whether the general manager can pay it.

Mr. FURUSETH. No; I was wrong.

Senator UNDERWOOD. Because I give it to the very tribunal that has the right to increase the rates, so that he will have the money to pay it, and therefore that equation would not enter in.

Mr. FURUSETH. It may be, Senator, that that proposition is the best that can be adopted. I do not know. I have not given very much consideration to it. But I am afraid of that kind of thing, because I have come to the conclusion long ago that even the best of men unconsciously drift in a certain direction, and they may bring out scales of wages and hours of labor that would appear to them to be very fair, and appear to the public (it is a question what we mean by the public) as being fair, and yet might be a very great hardship on the men. Now, there is this advantage in your proposition, that it leaves the men free, collectively or individually, and if you have to have something of that description—I do not know whether you would have to or not; I do not think you would; but if you have to have something, perhaps that is as good a thing as can be given, although I would be very slow in accepting any such proposition.

Senator UNDERWOOD. You prefer that there should be no legislation on the subject?

Mr. FURUSETH. Yes; I do, for this reason: In the temper that people are now in I am afraid that the legislation will not be the kind of legislation that would be very good for the people, as a whole, not to speak of the workingmen. People are not in the mental attitude now to deal calmly with such questions, either in this country or any other, and the changes that are going on in the popular mind at the present time may transform the entire situation and give to all legislators, here and elsewhere, a different outlook upon life.

Senator UNDERWOOD. If there is to be legislation, have you any suggestions that you think will more fairly meet the question from all sides involved than the proposition I have made here?

Mr. FURUSETH. I have not given, as I said, any very serious thought to that, because my belief is so deep rooted in the curative properties of freedom itself that I believe any interference with it, beyond keeping the peace, is a bad proposition.

Senator UNDERWOOD. There is no interference with freedom in this bill.

Mr. FURUSETH. That is true; but it gives to a commission—and, after all, they are men on that commission—a tremendous power. It gives them what? It gives them power to say what kind of a house the man and the woman are going to live in; how often they shall see each other; what kind of food they shall eat; what clothes they shall wear; whether the children shall go to school or not. It gives them a more intimate control over the daily, hourly life of several millions of people than was ever held by any potentate anywhere in the world at any time.

Senator UNDERWOOD. But that power now is possessed by boards of directors throughout the United States, and general managers.

Mr. FURUSETH. Was, Senator; I would use the word "was." It is now modified to some extent by two forces. It is modified by the force of organization amongst the workmen and by public opinion generally.

Senator UNDERWOOD. Public opinion will be reflected in this tribunal.

Mr. FURUSETH. Hardly to the same extent. The people have learned after many years to distrust boards of directors. They have a disposition to think that they are out for all there is in it, and they will not have that kind of a feeling with reference to the commission.

Senator UNDERWOOD. Certainly not, and that very argument would lead to the proposition that the commission was likely to be a fairer tribunal to fix a reasonable wage and reasonable hours than the board of directors.

Mr. FURUSETH. I am not so sure that it will be a fairer—well, it will be a fairer tribunal than the boards of directors, of course; but, after all, the tribunal here that is ultimately determining, really determining, is the people as a whole. They will express themselves in one way or another ultimately, through legislation probably; but oh, that commission with that power!

Senator UNDERWOOD. You say the people will express themselves on those questions in legislation. You do not think it would be better for the workmen of the country for Congress by a hard and fast law to say what the rates of wage shall be, that can not be changed until another law is passed, than to leave it to a tribunal where labor can present by petition its complaint and have it heard from time to time?

Mr. FURUSETH. If I had to have a choice of the two, I would take Congress every time.

Senator UNDERWOOD. You would rather have a hard and fast law?

Mr. FURUSETH. I would rather have a hard and fast law for a certain time made by Congress, because Congress is, after all, the representative of the people. Commissions do not represent the people except theoretically. Commissions are fundamentally a Russian form of government.

Senator LIPPITT. Mr. Furuseth, you spoke some time ago rather in an attitude of minimizing the extent to which a railroad strike would

have gone last fall if it had occurred. Do you really think that if a strike had been called it would not have been a serious matter?

Mr. FURUSETH. I think it would have been a serious matter, but I do not think it would have been so serious a matter as to justly result in depriving the citizens of the United States who happened to be working for a living on the railroads of the rights of citizenship and their rights as men.

Senator LIPPITT. I was not going into that part of it. I rather caught the idea from what you said that you thought the strike would not last long. You spoke about other labor rushing in to take the place of these men who were on the railroads.

Mr. FURUSETH. What might have happened this last fall I do not know. I would say that possibly it would not have been any large number of people rushing in, because the people out along the countryside and along the railroads know that the large number of railroad men are working 12 to 14 hours a day and under conditions that neither the railroad men nor their particular acquaintances around the country like. I do not know that in this particular case last fall there would have been any great rushing in.

Senator LIPPITT. I thought you said you thought there would be a rushing in.

Mr. FURUSETH. What I meant to say was this: That if there is a strike for wages or hours which would put the railroad men—speaking now of the railroads purely in advance of the hours and wages of equally skilled people—if that was the situation, then the people would be rushing in, just as water rushes through a siphon from one car into another until it reaches a level.

Senator LIPPITT. You mean, if they had succeeded in getting higher wages the people would have rushed in to take their places?

Mr. FURUSETH. No; I mean if they had reached an equality in the wage level. There is a wage level in the community and an hour level. Suppose they have reached that hour level and wage level and gone a little above it, just a slight mite above it. Inasmuch as they go above it, there are men coming in from everywhere—in the case of a strike, if their condition has reached that point, and if they then ask for any serious improvement, there is not any doubt in my mind that men would come from everywhere to take their places.

Senator LIPPITT. That is, that is the general law that applies to that condition?

Mr. FURUSETH. I think it is the economic law and the law of life.

Senator LIPPITT. That, of course, is true; but I understood from what you said that you were referring to this particular case. You said that you thought people had exaggerated the importance of the result.

Mr. FURUSETH. I do not know whether that is so or not. I think there would have been a strike, myself. I think there would have been a strike, and I think it would have been a very serious one, for the time being; and, if I may volunteer that statement, I think it is a very good thing that it did not come.

Senator LIPPITT. Yes; I think we all think that.

Mr. FURUSETH. It was a good thing for the brotherhoods and a good thing for everybody else.

Senator LIPPITT. Very likely. Perhaps I got the wrong idea from what you said. I thought you meant to imply that it would not have been very serious, but apparently you did not mean that.

Mr. FURUETH. No; that was something in the future.

The CHAIRMAN. Mr. Furuseth, in case of Government ownership, would you expect the power of strike to be reserved?

Mr. FURUETH. I would. I would not expect it ever to be used, but I would expect it to be reserved, certainly.

The CHAIRMAN. And you would expect the working organizations to have the same powers and rights as they have now?

Mr. FURUETH. I am not prepared to say that; I have not given any serious thought to that matter. The only thing I have given serious thought to with reference to the whole question is this: That I do not believe that either the people as a whole or any individual class of the community has any right to deprive another class or another aggregation of people of their rights as citizens and their rights to freedom. I do not believe that it is safe for the Government itself to take that right away, even in its own service. I do not believe it is safe to do it. I do not believe it is necessary to do it, and I do not believe it is safe to do it.

The CHAIRMAN. Are there any other questions?

Senator POINDEXTER. Just one question in reference to Senator Underwood's proposition that the Interstate Commerce Commission should have the power to fix hours and wages. Suppose that law were passed; what effect would that have on the settlement of controversies with the brotherhoods about these matters? Would they still propose to strike against the rulings of the Interstate Commerce Commission? And if they did strike, what would be the result?

Mr. FURUETH. It seems to me the brotherhoods would be best able to answer that question. So far as I am concerned, speaking for myself, I believe that the man must have the right, individually or collectively and both, to quit work whenever he wants to; that is, when he is not immediately endangering human life by so doing. He must have that right for any reason or for no reason. It is a right that is inherent in him as a man. It is understood in our religion and in the fundamentals of our own Constitution; that is, in our own polity. I do not believe that men can be deprived of these rights without the people of the United States committing what the Scriptures call a sin against the Holy Ghost.

Senator UNDERWOOD. There is nothing in this bill that deprives a man of any of those rights.

Mr. FURUETH. That is true. It is only indirectly; and whatever the result of their decisions may be, I would ask you not to press me on that question any more, because, really, if I had given the serious attention to it that it deserves, I am afraid I have not the capacity to deal with it. But, as it is, I have not dealt with it; I have not studied it carefully enough. I have been occupied since I have come back here again with trying to get the Commerce Department to enforce the seamen's act.

Senator CUMMINS. Mr. Furuseth, I have some questions to ask you, and I will not be able to conclude within less than 15 or 20 or 30 minutes.

The CHAIRMAN. Would you prefer to go on to-morrow?

Senator CUMMINS. I do not know what the pleasure of the committee is.

The CHAIRMAN. Could you attend here tomorrow, Mr. Furuseth?

Mr. FURUSETH. Yes, sir; certainly.

Senator CUMMINS. I do not want to delay the committee; I would like to go on now if the committee would sit.

The CHAIRMAN. So far as I am concerned, I am willing.

Senator CUMMINS. Possibly I can get through in less time, but we have been dealing in somewhat fundamental things this morning.

Mr. Furuseth, calling your attention to the bill proposed by the Senator from Alabama, you will observe that there are two questions involved in it. First, the surrender of individual or collective bargaining, and, second, our constitutional competency to give the power to the Interstate Commerce Commission. I want to ask you about the first especially. Labor unions are generally organized to better the condition of their members, their hours of labor, conditions of labor, and wages.

Mr. FURUSETH. Yes.

Senator CUMMINS. They are intended to give the strength of many to accomplish that object.

Mr. FURUSETH. As I understand it, that is so.

Senator CUMMINS. Generally speaking, you believe, and they believe, that labor is underpaid. Is that not true?

Mr. FURUSETH. Yes.

Senator CUMMINS. That it does not receive its fair share of the products of labor or the profits of labor. That is true, is it not?

Mr. FURUSETH. That is what we all believe, nearly all of us.

Senator CUMMINS. What do you think will happen when you take away from men engaged in a particular service the right to struggle for better wages, better conditions? I am now speaking of the right to struggle in the way of bargaining for themselves?

Mr. FURUSETH. The result of that would be one of two things in all probability. Either they would submit, which is hardly thinkable, or they would struggle; and if the open struggle were suppressed, they would resort, as they always have done in ages past, to an undercurrent struggle.

Senator CUMMINS. This plan is to give over to the Government the right to fix wages. That removes the entire struggle except as it is carried on before the Government tribunal; does it not?

Mr. FURUSETH. Yes. That is why I am afraid of it.

Senator CUMMINS. The Government tribunal, we will assume, is directed to say that labor in this particular field shall be reasonably paid. What standard does that set up? What is a reasonable wage?

Mr. FURUSETH. The nearest thing to a standard that I have ever heard of is the standard set up by, I think it was Pius the Ninth—sufficient upon which to live; procreate and lay something by for old age; to live in comfort, procreate, lay by for sickness and old age. That is what we call a living wage.

Senator CUMMINS. Do you think that the reasonable wage is the synonym for a living wage?

Mr. FURUSETH. It ought to be. Whether it is or not is the question.



Senator CUMMINS. You will remember that many years ago, when John Stuart Mill was writing on this subject he said that the fate of the great mass of the laboring people of the world—I think he said all mankind—was to oscillate about the line of actual starvation, never rising high above, and never, of course, passing far below. Is that your idea of a reasonable wage?

Mr. FURUETH. No.

Senator CUMMINS. The effort is for each man to get as much as he can for his labor. That is the struggle of life. Would that be the standard recognized by the commission?

Mr. FURUETH. I am afraid of the commission, as I stated to Senator Underwood, because I do not know what standards it will have, and I am afraid of the influences that are bound to be at work upon it, even with the best of men.

Senator CUMMINS. Well, putting aside entirely the influences, which I am not dealing with now; I am dealing with the problem itself. It says it is going to fix for engineers a reasonable compensation.

Mr. FURUETH. Yes.

Senator CUMMINS. Now, in the law, if an engineer should sue a railroad company for compensation, none having been agreed upon, the standard would be a reasonable wage, and that would be ascertained by discovering what engineers were ordinarily paid for a like service. Are you, as a laboring man, satisfied with that kind of standard to determine what men shall be paid?

Mr. FURUETH. I am not.

Senator CUMMINS. That absolutely cuts out the hope of advancing wages?

Mr. FURUETH. Exactly; that is why I am opposed to it.

Senator CUMMINS. I thought you said you were in favor of it.

Mr. FURUETH. If something must be done, perhaps it is as good a thing as can be done. That is what I said. I am afraid of the commission. As I said, or as I tried to say at the beginning, the Interstate Commerce Commission would be very largely in the position of the Quarter Sessions, and of course there is no doubt that anything in the matter of Government setting wages, either directly or indirectly, through a commission, it will set it as it is and shut off, therefore, the hope of improvement.

Senator CUMMINS. I am assuming now that the commission would be made up of honest men, men of humanity, who wanted to do the best they could by society. But in fixing the wages they would either have to take the standards which the men themselves had finally established, or they would have to take a standard fixed in some other occupation of general similarity. Now, if all occupations were drawn into the hands of the Government, how would there ever be any opportunity for laboring men to get any more than they were getting at the time the transformation took place.

Mr. FURUETH. I do not know. It is rather a bigger idea than I have seriously been thinking about.

Senator CUMMINS. In determining what a locomotive engineer should receive, the commission could not go to the fees of a successful lawyer and measure his compensation by the earnings of a man in a profession; and where would it go in order to ascertain how much the engineer should have?

Mr. FURUSETH. Oh, you would unquestionably go to the level of the wages that engineers are getting, and set that; and there is not any question in my mind that it would prevent any improvement.

Senator CUMMINS. But inasmuch as all the locomotive engineers would be drawn into the inquiry, there would be no comparison; there would be no other engineers to whom to go in order to ascertain what they were ordinarily paid. I wanted to see whether you had thought about that phase of the matter.

Mr. FURUSETH. That phase of it I have not.

Senator CUMMINS. You have simply thought that it was better for the Government to fix wages than to prohibit strikes!

Mr. FURUSETH. Yes, sir.

Senator CUMMINS. That really was what was in your mind?

Mr. FURUSETH. That was the substance of what I had in mind, Senator. I am willing to do anything in preference to having the right to quit and the right to strike taken away, because that takes away every hope altogether.

Senator CUMMINS. Do you know of any rule that could be given to the commission that would enable it to fix wages other than the term employed by the Senator from Alabama, "reasonable wages"? Do you know any way that the Government can undertake to fix these things and still give the opportunity to the men to increase their wages?

Mr. FURUSETH. No; I do not.

Senator CUMMINS. Suppose you adopt the cost-of-living theory; then you have got to determine what kind of a house the engineer should live in?

Mr. FURUSETH. Yes.

Senator CUMMINS. And how many times a week he should go to the theater, what kind of clothes he ought to wear, how many children he ought to have, how he should clothe them, feed them, and educate them. All these things would have to be determined in order to know even what a living wage is.

Mr. FURUSETH. Yes; and for that reason I am afraid of it, as I stated to the Senator. It is too big a power to put into the hands of a commission.

Senator CUMMINS. To me the difficulty is not the bigness of the power, but its indefiniteness and how it can be exercised so as to take care of the whole problem.

Speaking about the public—a very much misunderstood term, I think—when a railroad company makes a contract with an engineer, fixing his wages, the public is not represented then, is it?

Mr. FURUSETH. No.

Senator CUMMINS. The public is affected, however, just the same as though the wages were fixed elsewhere, by somebody else. The public is not represented in individual or collective bargaining in any other sense than that the opposing interests of the two bargaining parties is believed finally to result in a fair, just arrangement. You do not assert, of course, that the liberty of an individual must be without limit; there are some things that we must prevent the individual from doing.

Mr. FURUSETH. Surely.

Senator CUMMINS. And that is in the interest of society generally; and your proposition, as I understand it, is that society on the whole

will be better taken care of by giving men the right to strike, even though it does occasion inconvenience, than it will be taken care of if they are denied the right to strike?

Mr. FURUSETH. I am perfectly sure that that is the situation.

Senator CUMMINS. You are measuring, after all, the question by the very same standard that our worthy chairman suggests, namely, the welfare of society. You think it would be better now and then to suffer the inconveniences of a strike than to take away this right?

Mr. FURUSETH. That is what I think.

Senator CUMMINS. Not better for the men involved, especially, but better for all—the whole of society?

Mr. FURUSETH. That is my conviction.

Senator CUMMINS. It is simply a comparison between the outcome of the two policies of government?

Mr. FURUSETH. That is my view.

Senator CUMMINS. That is all, Mr. Chairman.

Senator UNDERWOOD. Mr. Furuseth, let me ask you one question: The present law, the original law, written by Congress to establish the powers of the Interstate Commerce Commission, to fix the rates of transportation, used the words "reasonable rates of transportation." Under that rates of transportation have been raised and lowered. The commission was able to work out what was a reasonable rate between the public and the railroads, were they not?

Mr. FURUSETH. No; they were not, up to the present; and so, in order to find some basis upon which to deal with the questions you passed the physical valuation bill.

Senator UNDERWOOD. They have adjusted it, though.

Mr. FURUSETH. They have adjusted it for the time being as best they could, so to keep things going; and in the meantime the public is probably paying too much, or the railroads may in some instances be getting too little, but that is another matter.

Senator UNDERWOOD. Do you think that the men expect, with a proposition ahead of them that any increase of wage that comes to the railroad men must ultimately be paid by the traveling public or the shipping public, and rest on the commerce of the country; do you think that the men involved in the business, working for the railroads, would at any time demand a wage that they did not think was a reasonable wage?

Mr. FURUSETH. The railroad men? No; they would demand what they thought was a reasonable wage. Even if it was not reasonable, they would persuade themselves that it was reasonable; there is no doubt at all about that. It might be too small under the circumstances and it might be too large, but they would still persuade themselves that it was reasonable.

Senator UNDERWOOD. Do you think that they would come before this commission and ask for anything more than they thought was a reasonable wage?

Mr. FURUSETH. Oh, they would not come for any more than they thought was a reasonable wage.

Senator UNDERWOOD. If they established it to be a reasonable wage, do you not think the commission would allow it if they were convinced that it was a reasonable wage?

Mr. FURUSETH. The commission would in all probability take a medium between what the employer thought was reasonable and

what the engineers thought was reasonable. They would cut it in two as nearly as they knew how and that is what I think they would call reasonable.

Senator UNDERWOOD. That is what is done, practically, now, is it not, in the settlement of these disputes?

Mr. FURUETH. Yes; but it is done by themselves and with the opportunity to open it out, and in addition to that they are not meeting the decisions of this highly respectable trained body of men.

Senator UNDERWOOD. Do you not think that the more highly respectable, the better trained and informed, and the higher character of the men who make the decision in reference to these questions, the more likely the decision is to be along the lines of justice, equity, and reasonableness?

Mr. FURUETH. Why, of course, if they knew all the things. But even the highest of men do not know all things. We got away from the power of judges through the jury system. We got away from the power of kings through the representative system—in spite of the fact that they were the very highest that we could think of. We have gone so far as to say that we would trust God to select rulers for us, and still they were making mistakes, and the people suffered under them; and I am afraid that the commission is just as human as the rest of them.

Senator UNDERWOOD. You have a king so far as the control of wages are concerned in the president and board of directors of the railroads. Their decision is arbitrary and must stand unless they change it themselves.

Mr. FURUETH. Unless some pressure is brought to bear upon them that will compel them to change it.

Senator UNDERWOOD. It is the same way with a king.

Mr. FURUETH. Exactly.

Senator UNDERWOOD. We took the power away from the king and gave it to the jury. Are you not submitting this proposition, under this bill, to a very intelligent jury to pass on it, instead of a man who exercises an arbitrary power?

Mr. FURUETH. Well, I do not know. If we are to have industrial courts, I should think there ought to be an industrial jury. The jury should be of the peers of the men on trial and the engineers on trial as to wages should have an engineers' jury.

The CHAIRMAN. The committee will now adjourn.

(Thereupon, at 12.45 o'clock p. m. the committee adjourned until to-morrow, Tuesday, January 9, 1917, at 10 o'clock a. m.)



# GOVERNMENT INVESTIGATION OF RAILWAY DISPUTES.

TUESDAY, JANUARY 9, 1917.

UNITED STATES SENATE,  
COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The committee met at 10 o'clock a. m., at Room 326, Senate Office Building, Senator Francis G. Newlands (chairman) presiding.

Present: Senators Cummins, Brandegee, Robinson, Townsend, Pomerene, and Poindexter.

The CHAIRMAN. The committee will come to order. Are there any representatives of the railroad brotherhoods or other labor organizations who would like to be heard?

Mr. WILLS (representing the Brotherhood of Locomotive Engineers). Mr. Chairman, if there is no one else, I think perhaps the representatives of the railroad brotherhoods would like to be heard briefly; but we would rather wait until the rest have spoken if we could.

The CHAIRMAN. Is there anyone else who would like to be heard?

Mr. COWLES (representing the World Postal League). I should like to be heard.

The CHAIRMAN. How much time do you desire, Mr. Cowles?

Mr. COWLES. I would like about an hour, if I could have it. However, I will take what time you can give me.

The CHAIRMAN. I think that the committee can allow you 20 minutes.

Mr. COWLES. All right, sir.

The CHAIRMAN. You may proceed, and after that we will ask the brotherhoods to be ready to proceed, as the committee is desirous to get immediately to the consideration of the bill.

## STATEMENT OF MR. JAMES LEWIS COWLES, PRESIDENT WORLD POSTAL LEAGUE.

Mr. COWLES. Mr. Chairman and gentlemen, the long series of experiments in the Government regulation of the speculators, who have hitherto regulated the movement of persons, produce, and intelligence in this country under the claim of ownership of our machinery of public transportation and transmission, have proved an absolute failure.

Even the able railroad advocate, Mr. Thom, acknowledges it, and 10,000 additional railway witnesses could not alter the verdict.

As to the speculators' claims of ownership of the \$15,000,000,000 of outstanding railway securities, the six billions of stock, which

control the management of the railways, cost the original holders only the expense involved in the issue of their stock certificates. The only value of these certificates lies in the power of their holders—the original speculators and their successors, through legislation secured sometimes undoubtedly through gifts of these pieces of costless paper, sometimes by other methods to transmute them into gold by tolls levied upon the public on the principle of the value of the service rendered, and limited only by what the subject will bear. Are the holders of this costless paper innocent purchasers? Have they any valid claim against the public? There may be even considerable doubt as to the bonds issued by these speculators. Both the bonds and the stock are in any case subject to the public-welfare clause of the Federal Constitution.

But whatever the validity of the railroad securities of this country, the American public will treat the holders of railway and other similar securities very generously; they will, however, insist that hereafter our whole machinery of transportation and transmission shall be managed by you gentlemen and your associates, and solely for the public conveniences, the public security, and the public prosperity.

“But,” say our old railroad friends, “you will never be able to raise the funds needed for this purpose.” We will run the risk.

From the moment you gentlemen and your associates bring this business under our public service post office, with low, uniform, cost of the service rates, door to door everywhere, millions of dollars will come to you from the districts needing new facilities; land and labor will be freely donated; the States especially benefited will join in the good work; you and your associates, the managers of our great cooperative commonwealth, will do the rest. The rapid development of our ordinary highways affords ample proof that under the conditions suggested ample funds will be found to extend our great postal machinery and to keep it at the highest state of efficiency. The result of the recent nationalization of the British railways affords interesting proof as to the benefits that would follow Government ownership and operation here.

#### THE NATIONALIZATION OF THE BRITISH RAILWAYS.

On the outbreak of the war, says Robert Donald, editor of the London Daily Chronicle, the British railways were nationalized:

The Government agreed to guarantee the dividends of the railroad corporations. The management of the roads was placed in the hands of a railway executive board, composed of the chief officers of all the railway companies. These men hold daily meetings, just like a great American railroad corporation, and control the whole railroad and transportation system of the country. The State not only took over the railroads, but also the docks belonging to the railway companies and their harbors and steamships, engineering works, etc.

The first duties of the railways in war time are to carry troops, next to carry supplies for the troops and the Navy, and to distribute foodstuffs for the general community. All this has been a prodigious traffic in itself, but the railroads have been quite equal to it. There have been no complaints about the State management of the railroads. It has worked so well that every one hopes that the State control will remain after the war. There has been no wastage from useless competition or overlapping; and in spite of the fact that over 150,000 railroad men have joined the forces, the service, while somewhat curtailed, has caused the general public no great inconvenience.

From an administrative and financial point of view the State control has been so successful that the Government is able to pay the railway companies

their dividends as guaranteed, and at the same time has been able to carry all the troops free. Free travel has also been granted to relatives of wounded soldiers and for the conveyance of the wounded to convalescent homes all over the country. The traffic in connection with Red Cross work, hospitals, and convalescent homes has also been a big part of the free business.

A word more as to funds.

#### FUNDS FOR THE CONSTRUCTION OF TRANSPORT MACHINERY AT 2 PER CENT INTEREST.

Our Postal Savings Bank System came into being on the 1st of January, 1911, limited, however—through the opposition of private bankers—to individual deposits of but \$100 per month. \$500 in all, with interest at 2 per cent.

The evil results of these limitations on the funds loaned by the people to the Government were clearly set forth at the hearings before the House Postal Committee in December, 1913, on the pending postal appropriation bill.

On that occasion Postmaster General Burleson cited a case in Virginia where a deposit of \$53,000 had to be refused because of these unhappy limitations, and the Third Assistant Postmaster General, Mr. Dockery, presented letters from 70 postmasters, telling of hundreds of cases where amounts from \$500 to \$5,000 had to be turned away. Two instances occurred in Philadelphia, where would-be deposits of \$10,000 and \$13,000, respectively, had to be refused.

The postmaster of Pittsburgh, writing on the 26th of November, 1913, said that if the deposit limit were removed the deposits in his office—\$400,310—would become \$2,000,000 within six months. "Every day," he said, "sums in excess of \$100 are offered, and almost every day patrons who have reached the maximum for one month attempt to make additional deposits. To-day three persons tried to deposit \$500 each. One of them was induced to start an account of \$100. The other two would not deposit anything when not permitted to deposit the whole amount. Yesterday a woman pulled \$2,000 out of her stocking, and it was with difficulty she was induced to take it away with her. These are daily occurrences. My recommendation is that the limit be removed."

With the extension of the postal savings deposit limit to \$2,000, although with interest only up to \$1,000, the result has been a very large increase in the deposits; with the limit entirely removed and interest allowed on all deposits a very large amount would undoubtedly be provided for the extension and development of our increased postal facilities.

As a means for raising funds, however, I ask you to consider the following proposition:

#### FUNDS FOR THE PURCHASE AND CONSTRUCTION OF GOVERNMENT TRANSPORT SERVICES FREE OF INTEREST.

When it shall be decided to bring the entire business of public transportation and transmission under the Post Office, a very large part of the funds needed for the purchase of old lines and the construction of new ones can be easily secured by the issue of postal orders—orders for the use of the postal machinery within the limits



of mechanical transport—for the transportation of sealed parcels (letters); sealed parcels requiring preferential delivery up to a pound in weight, 2 cents; ordinary parcels, sealed or unsealed, up to 1 pound, 1 cent; larger parcels, up to 5 pounds, 2 cents; over 5 to 11 pounds, 5 cents; over 11 to 30 pounds, 10 cents; over 30 to 60 pounds, 15 cents; over 60 to 100 pounds, 20 cents; over 100 to 200 pounds, 4 cubic feet bulk, 25 cents; ton parcels, 40 cubic feet bulk, \$1 for services door to door; and for the transport of passengers, local trains, 5 cents per trip; express trains, 25 cents; limited trains, \$1, etc. Orders for the use of the Post Office redeemable in such services for all distances. Orders increasing in value with every mile of new service will form a currency that will expand and diminish according to the demands of business, and that everybody will gladly accept instead of gold in return for all services rendered either to individuals or to the Government.

#### ELECTRICITY.

Note some of the economic possibilities before us. Mr. Samuel Insull, of the Commonwealth Edison Co., of Chicago, writing in the *Electrical Age* of February 16 last, said that the electrification of the railroads in the Chicago district alone would save 5,900,000 tons of coal a year out of a total consumption of 11,000,000 tons; and 135,000,000 tons of coal a year are used by our steam roads. By marshalling all the energy requirements of central stations, railway factories, mines, street cars, etc., the 43,000,000 horsepower now required for separate operations could be reduced to 50,000,000.

The savings would be almost fabulous, from 12,000,000 to 15,000,000 horsepower per day, at say \$200 per horsepower.

The annual savings in fuel consumption would be about 250,000,000 tons.

A universal system of electrical supply is as inevitable as day and night. It will mean an enormous saving in the cost of transportation; a very large saving of labor, interest, depreciation, general capital charges; the preservation of natural resources; lower relative consumption of copper, lead, and other metals. It will lead to lower-cost production and so to a lower unit price to the smaller users, corresponding to the most efficient mobilization of the business. There would be a gain to all down to the occupants of the smallest city flats—cheaper power and lower-priced heat and light for both rich and poor.

#### EXPERIENCE OF THE NORFOLK & WESTERN RAILROAD.

When trains go down hill the generators pick up electricity while breaking the train, and the power is pumped back into the line.

The electrics work 22 hours a day, and might work 24 hours, except for the superficial inspection at the end of each run. It is only necessary to give the electrics a thorough overhauling once in two weeks.

Twelve electrics do the work of 30 steam mallets. One electric more than equals two mallets. There is no more firing, no more watching of stokers, no more dirt, no more stops for coal and water. In steam locomotives the engineer has the locomotive in front of him: in the electric, the engineer is at the front and always has a

clear view ahead. On the electrics, the engineer is relieved of all anxiety as to keeping up the mechanism and power supply—he is comfortable at all times. Elecetrics run from 60 to 75 miles an hour when needed; heavy passenger trains run at 45 to 60 miles an hour; freight trains run from 30 to 45 miles an hour. Electric switchers work continuously for days together, doing two or three times the work of as many steam engines.

THE UNITED STATES OF AMERICA IS A COOPERATIVE COMMONWEALTH, A JOINT-STOCK CORPORATION, IN WHICH EVERY VOTER HAS EQUAL POWER WITH EVERY OTHER.

"Its creed," says Secretary Lansing, "is 'one for all, all for corporation.' Its basic law is 'the public welfare.' Its chief mechanism is the public-service post office, with its flat rates guaranteeing equality of rights and of privileges to all."

As to this doctrine, note the Declaration of Independence:

We hold these truths to be self-evident, that all men are created free and equal, that they are endowed with certain inalienable rights and privileges, that among them are life, liberty, and the pursuit of happiness, that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

Also note this from one of the first messages of President John Quincy Adams:

The will of the people is the source, the happiness of the people the aim, of all legitimate government upon earth; to refrain from using the powers of government for the advancement of the people would be treachery to the most sacred of trusts.

As to the post office, note this statement by President James Madison in the *Federalist*:

The power of establishing post roads must by every view be a harmless power and may perhaps by judicious management become productive of great public conveniency. Nothing which tends to facilitate intercourse between the States can be deemed unworthy of the public care.

Observe also this from the report of the Postal Commission of the Fifty-ninth United States Congress, January 28, 1907:

Upon the Postal Service more than upon anything else does the general economic as well as the social and political development of the country depend.

#### POST-ROAD MACHINERY.

Our land, water, and air lines—railway, trolley, auto, and airship lines; motor boat, steamboat, and steamship lines; telegraph and telephone lines (wire and wireless)—are all post roads. The common welfare demands their immediate consolidation under the Post Office.

IN OUR PREPARATIONS FOR POSSIBLE WAR THE GOVERNMENT OWNERSHIP AND OPERATION OF OUR MACHINERY OF PUBLIC TRANSPORTATION AND TRANSMISSION IS AN IMMEDIATE NECESSITY.

In his paper "Invasion or intervention," in the May number of the *World's Work*, Mr. George Marvin said that, with the exception of two or three special areas and the straight continental haul, the

railroads are collecting full passenger fares for every soldier carried in the movement of troops and supplies to Mexico:

It set the Government back between \$30,000 and \$40,000 just to get the Eleventh Cavalry out of Georgia into New Mexico, the same amount of money that it took to coal the *Tennessee* while carrying Mr. McAdoo's International Commission down to Buenos Aires.

Now, according to the investigation and suspension docket of the Interstate Commerce Commission No. 600—relative to passenger fares in the western territory—issued December, 1915, the number of seats in the average passenger car to-day is about 70, probably more than less. Owing, however, to fares so high that the ordinary citizen can seldom afford to travel, fares so high that in many instances men seeking work are deprived of the opportunities to find it, the seats occupied in the average car of 1908 were less than 15 (14.77), and for the year ending June 30, 1914, only 14.12—considerably less than in 1908.

It therefore follows that, all the seats being occupied in the transportation of troops, the railroads are to-day exacting from the Government about five times the amount received in their ordinary passenger traffic, and this notwithstanding the fact that the cost of the railroads in each case is practically the same. It is further to be observed that the substitution of electricity for steam in railroad transportation is cutting the cost of railroad operation to about one-half what it was in 1908.

Germany's success in the European war has been largely due to the Government ownership and operation of her machinery of public transportation and transmission. England and France found it necessary to take their machinery of public transportation and transmission under complete Government control the moment they accepted Germany's challenge.

Given Government ownership and operation of our entire machinery of public transportation and transmission and supported by low uniform cost of the service flat rates (the ideal condition would be a service absolutely free and supported by the taxation of the districts to which this machinery gives their commercial value) as long ago suggested by Prof. Seligman, of Columbia University, and we would not only be able to carry with ease the tax burdens voted by Congress for "preparedness"—in case of aggression we would meet the foe wherever he might appear with forces absolutely irresistible. And this other result would also follow: The death-dealing fear which has been the curse of mankind throughout all the ages would pass from our people and with cooperation accepted as the American ideal—with Secretary Lansing's idea, "One for all, all for one," as our common creed—with our country offering freedom of trade, the basis of our United States of America as the basis principle of the United States of the world, we would quickly lead all nations out of the chaos which now prevails into a period of world's service that would quickly transform our old warring earth into a bit of heaven. Verily, this Congress must not adjourn until it has made these American ideals a grand reality.

“SHALL WE PROTECT OURSELVES?”

Under this heading the editor of the New York Times, in his issue of December 27, wrote:

We are talking a great deal about preparedness, but we are making little actual progress. In spite of the felicitations in the various annual reports of our War Department, the mobilization of the militia on the Mexican border last summer was a sorry business, quite apart from the inevitable deficiencies of the militia. And six months afterwards it takes eight days for a regiment of troopers to travel from Texas to New York, while their horses are kept in one place on the route for many hours without food or water. With this kind of management by our expensive Washington bureaus how can we expect to be able to defend ourselves in case of a warlike attack such as peaceful Belgium suffered almost without warning? It is in this light that argument for preparedness should be considered.

I quite agree with the editor of the Times, but the blame for this miserable service rests not on the Government, but with the private railroad speculators, whose chief aim seems to be the public exploitation, the public service the merest incident. I think that the very first step the Government should take in the way of preparedness, either for peace or war, should be the bringing of our entire machinery of transportation and transmission under our public-service post office. Not until this business is under the absolute control of the Government can we be prepared for the real necessities of our modern life.

The CHAIRMAN. Your time has expired, Mr. Cowles.

Mr. COWLES. I thank you very much.

(Mr. Cowles was thereupon excused.)

The CHAIRMAN. There will be inserted in the record at this point a petition submitted by Hon. Claude A. Swanson, signed by section foremen and bridge foremen of the Southern Railway.

(The document referred to is here printed in full as follows:)

UNITED STATES SENATE,  
COMMITTEE ON PUBLIC BUILDINGS AND GROUNDS,  
December 7, 1916.

Hon. FRANCIS G. NEWLANDS,

*Chairman Committee on Interstate Commerce, United States Senate.*

MY DEAR SENATOR: I inclose herewith for the consideration of your committee a petition signed by section foremen and bridge foremen of the Southern Railway, which is self-explanatory.

With kind regards, sincerely, yours,

CLAUDE A. SWANSON.

*To the honorable the Members of the Senate and House of Representatives of the United States in Congress assembled—Greeting:*

We, the undersigned voters and employees in the maintenance of way, department of American railways, do respectfully petition your honorable body to include the employees in our department in the workings of the eight hour day. We respectfully submit for your consideration the following facts:

First. That the number of employees affected are in excess of 40,000.

Second. That our work is of a most strenuous nature—rough, dirty, and laborious—and has to be performed often under the most unfavorable conditions; in heat and cold, winter and summer, rain and shine our men are exposed to all kinds of inclement weather conditions by night and day, as we are subject to a call at any time, and in case of severe storm we are expected to go on duty without a call except as our experience shall dictate that same is necessary to preserve intact the tracks and bridges, for the safety of which we are held responsible.

Third. That at certain times, owing to the strenuous nature of our employment, men are often physically unable to stand the strain and as a consequence in a few years are broken in health and unable to continue longer at this work.

Fourth. For the preservation of health and prolongation of life, aside from any pecuniary consideration, we deem an eight-hour day an actual necessity.

Fifth. At the present time, although we must serve an apprenticeship of from three to seven years to become proficient in the trade to earn a foreman's position, our department is one of the poorest paid in the entire service while our duties and responsibilities are among the most exacting.

Wherefore we pray you to give our petition consideration and grant us the relief we so earnestly desire.

B. F. Cary, 208 West Eighth Street, South Richmond, Va.; G. R. Moody, 222 Brook Street, Lynchburg, Va.; J. W. Ogden, R. F. D. No. 1, Madison Heights, Va.; I. L. Sisk, Durmid, Va.; J. M. Scruggs, Evinston, Va.; R. L. Hight, R. F. D. No. 2, Lynchburg, Va. (Montview, Va.); P. H. Sisk, Durmid, Va., box 141; I. H. Pate, Lynch Station, Va.; J. B. Gibson, Altavista, Va.; M. Johnson, Lynch Station, Va.; Joel Short, Motley, Va.; Chas. Hogan, Sycamore, Va.; Carl White, Sycamore, Va.; Jack Barbour, Sycamore, Va.; R. A. Dalton, Sycamore, Va.; E. L. Sisk, Durmid, Va.; S. T. Coggin, Greensboro, N. C.; J. C. Campbell, Whittles, Va.; O. L. Hendrix, Gretna, Va.; J. L. Fox, Chatham, Va.; W. A. Dalton, Dry Fork, Va.; A. S. Dunn, Lawyers, Va.; J. H. Ashworth, Chatham, Va.; W. H. Overley, Witts, Va.; B. D. Russell, Witts, Va.; C. C. Ashworth, Danville, Va.; J. T. Dudley, Lawyers, Va.

Mr. WILLS. Mr. Chairman, we had expected that the representatives of the carriers would have appeared here before this time, but they have not. We will not care, perhaps, to take very much of your time. Mr. Doak will represent, to some extent at least, the four railroad brotherhoods, after which Mr. McNamara, who is present, will perhaps have something to say, which will, I think, complete what we will have to submit, unless something is brought up by the carriers to which we may care to reply. Mr. Doak is the vice president of the Brotherhood of Railroad Trainmen.

**STATEMENT OF MR. W. N. DOAK, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE OF THE BROTHERHOOD OF RAILROAD TRAINMEN, ROANOKE, VA.**

The CHAIRMAN. How much time would you like, Mr. Doak?

Mr. DOAK. I do not know exactly how long, Mr. Chairman.

The CHAIRMAN. Will you give your full name and address to the reporter?

Mr. DOAK. W. N. Doak, vice president and national legislative representative of the Brotherhood of Railroad Trainmen. My home address is Roanoke, Va.; city address, 101 B Street SE.

Mr. Chairman and gentlemen of the committee, in appearing here to-day I do so speaking for the four railroad brotherhoods, and will try in a brief manner to present the views of the four or five hundred thousand men who would be materially affected by the passage of any of these proposed measures. We are very unfortunate at this time not to have heard the position of the carriers, as has been stated by Mr. Wills.

Senator TOWNSEND. May I ask you, do you know what their position is from the conference that you have been having with them? Do you know what their attitude really is?

Mr. DOAK. I do not, Senator; and for that reason we were particularly anxious to hear what the position would be.

Senator POMERENE. Do you mean by that answer that you have had conferences with them and still you do not know what their position is?

Mr. DOAK. There have been conferences held on certain matters but not directly dealing with this question, Senator. Some other questions have been under consideration.

As I understand, you have under consideration at this time two tentative plans, one proposed by Senator Newlands and one by Senator Underwood. As I understand, the nature of Senator Newland's proposal is an amendment to the present act bearing his name, the Newlands Act, and is in line with the recommendation made by the President of the United States, to a certain extent, and is copied in substance after the Canadian industrial-disputes act.

As I understand the proposal of Senator Newlands, it first provides for the continuation of the present Board of Mediation and Conciliation; secondly, it makes it imperative that both parties apprise the Board of Mediation and Conciliation of any disagreement that is likely to cause trouble.

Third. The board must offer its services and investigate the situation when a controversy of this nature arises, and they are apprised of such controversy.

Fourth. When there is a failure on the part of the Board of Mediation and Conciliation to effect a settlement or to get the contending parties to enter into an agreement to arbitrate their differences under the Newlands Act, the President is notified, and he appoints a committee of three as a board of inquiry. The duty of this board of inquiry is to ascertain as far as possible all the facts and circumstances of the controversy. The board has a maximum of three months in which to make its report of the findings, together with recommendations for a settlement according to the merits and substantial justice of the case; and this report is then published.

Then, there is a stay of 30 days after the report is published.

Fifth. Both parties to the controversy are restrained from taking any action during the period of investigation and for 30 days after the report is published.

Sixth. The act defines the terms "strikes" and "lockouts."

Seventh. A penalty is provided for any failure on the part of either party to observe the provisions of this act.

This, in substance, I believe, covers the proposed changes in the Newlands Act as proposed by Senator Newlands.

Senator Underwood's proposed measure provides that the Interstate Commerce Commission shall have authority to investigate all facts and to fix the rates of pay and hours of service of the employees engaged in interstate commerce; also providing that application may be made to the Interstate Commerce Commission by either the employer, employees, or the public.

We have very carefully considered these proposed changes in the law, and we feel, and have every reason on earth to feel, that this law deals directly with and only affects the members or those represented by these four train service organizations and the telegraphers; that these changes will materially affect the employees of the railroads, and it is almost useless for me to say to you at this time that we believe that such legislation is wholly unnecessary.

I want to briefly review what has been done in the way of mediation, conciliation, and arbitration for the past few years, and I think in doing so that it is convincing that there is no need or apparent need for any radical change in the legislation already in effect.

Senator TOWNSEND. Would it interrupt you at all to ask a question, or would you prefer to go on and make your statement?

Mr. DOAK. It does not make any difference, Senator. I will answer a question.

Senator TOWNSEND. I just wanted to get right on that before you go any further. Did I understand you to say that the only people affected by this legislation were these four or five hundred thousand people; that nobody else was interested in that legislation?

Mr. DOAK. We are the ones who are directly affected. It includes the engineers, the conductors, the firemen, the trainmen, the yardmen, and the telegraphers.

Senator TOWNSEND. What I mean is, you do not want to be understood, do you, as saying that the public and other interests are not vitally interested in this legislation?

Mr. DOAK. Oh, no; not in the least. I did not mean to leave that impression at all, but I meant, so far as the application of this law was concerned, that we were the ones and the only ones that were affected by the application of the law.

The first general law bearing on this subject was the act of 1888, approved October 1 of that year. The request, under the act of 1888, must be filed in writing by the party desiring same. If acceptable to the other party, then each party appointed one arbitrator and the two selected a third. The three thus constituted a board of arbitration. There was no provision under the law, if they disagreed, for the appointment of a neutral arbitrator. The board thus constituted had the full power to subpoena witnesses, require the production of papers, administer oaths, etc., the same as commissioners of the United States. The award of such board of arbitration was made public and a copy filed with the United States Commissioner of Labor. No authority, however, was given for the enforcement of the award.

This act provided that the President of the United States might select two commissioners to act in conjunction with the Commissioner of Labor for the purpose of examining into the facts of the controversy and suggesting the best means of adjustment. This commission transmitted its report to the President and to the Congress. The President could tender the services of the commission of his own motion or upon application of either party, or upon the application of the executive of the State. During the investigation by this commission the commissioners had the same authority as the board of arbitration. The report of this commission was made public and each party notified of its suggestions. There were no provisions, however, for the enforcement of its decisions.

This form was very seldom, if ever, used during its existence.

This act was supplanted by the act of June, 1898, known as the Erdman Act, after having been in effect nearly 10 years and without any results whatever. The Erdman Act provided that the chairman of the Interstate Commerce Commission and the Commissioner of Labor of the United States should constitute the board of mediation. If a controversy arose, either party could request the aid of

the board, their services in such cases being conditioned upon the receipt of a request for mediation by either party and the acceptance by the other. When such request was received the board tendered its friendly offices to the other party, either party being privileged to decline. In scope the law applied only to those engaged in the movement of interstate commerce, namely, engineers, firemen, conductors, trainmen, yardmen, and telegraphers.

Senator BRANDEGEE. Let me ask you this question: Why are not the switchmen all along the tracks included?

Mr. DOAK. All along the track?

Senator BRANDEGEE. Yes; the entire length of the railroad. You will notice that the bill, when it defines the term "employee," states that it is any person who is actually engaged in the operation of the train.

Mr. DOAK. I used the term "yardman," Senator. "Yardman" can cover yard foremen, conductors, switchmen, and whatever title they may be given. So they are included in the scope of the law.

Senator BRANDEGEE. They would be actually engaged in the operation of the trains?

Mr. DOAK. Oh, yes; certainly.

Senator BRANDEGEE. And are they organized also into a union?

Mr. DOAK. Now, that is a rather difficult question to answer.

Senator BRANDEGEE. Answer it in your own way as what the condition is that obtains.

Mr. DOAK. I will try to do so. The switchmen—of course, switching occurs in the yards—are members of the Brotherhood of Railroad Trainmen or of the Switchmen's Union of North America, and switch tenders, even the ones that are stationed at some points to throw switches, in some instances are eligible to either of the organizations.

Senator POMERENE. What do you mean by "eligible to either organization"?

Mr. DOAK. To membership in either of these two organizations, the Brotherhood of Railroad Trainmen or the Switchmen's Union of North America. Then, when you take up the tower men or the men that are up in the towers, they are sometimes members and are legislated for by the Order of Railway Telegraphers. So to define exactly whether they are all organized is rather a difficult matter; but, generally speaking, they are.

Senator BRANDEGEE. And the men who may not be in a terminal or in a yard, strictly speaking, but wherever there are sidings all along the entire length of the road—are those men who operate switches there, as a general rule, organized?

Mr. DOAK. Generally speaking, they are intermediate yards. These places are called intermediate yards, and, of course, the men would be eligible for admission into the organization and to be legislated for.

The CHAIRMAN. I am told there are about 2,500,000 to 2,800,000 employees on the railroads. Can you state approximately the classes that these employees belong to, outside of the men who are engaged in train operation?

Mr. DOAK. I could not, I suppose, cover them all, Mr. Chairman, but they have the clerical department—

The CHAIRMAN. Is it known how many there are of them?



Mr. DOAK. No; I do not know how many there are of them. However, your act, of course, does not apply to those men.

The CHAIRMAN. No.

Mr. DOAK. It does not apply to any of them; only to the men engaged directly in the handling of the trains, by actually handling the trains or handling train orders.

The CHAIRMAN. But there was a petition presented here by some representatives of the employees of the railroads outside of train operation. I think there were some three or four hundred thousand names, and I wanted to get some idea as to what the character of the service of the million or more men outside of those employed in train operation is.

Mr. DOAK. It would, of course, take in the entire clerical department, and then it would take in, I presume, the freight handlers in the stations and the shopmen, the track men, and all the other classes in connection with the operation of the railroad.

The CHAIRMAN. There are no statistics, to your knowledge, on that subject?

Mr. DOAK. No; I have not seen any, Senator.

Senator CUMMINS. I think Mr. Lee gave those in round numbers.

Mr. DOAK. Mr. Holder informs me, Mr. Chairman, that they are all computed and given in the yearbook of the Interstate Commerce Commission. I have not looked into that feature of it.

Senator POMERENE. May I ask that Mr. Holder furnish that, so that it may be incorporated in the minutes?

Mr. HOLDER. Yes, sir.

(The letter referred to was subsequently submitted and is here printed in full as follows:)

AMERICAN FEDERATION OF LABOR,  
Washington, D. C., January 9, 1917.

HON. FRANCIS G. NEWLANDS,  
Chairman Senate Committee on Interstate Commerce,  
Room 328, Senate Office Building, Washington, D. C.

DEAR SIR: During the hearings before your committee on January 9, in response to a request from Senator Pomerene, I promised to furnish a table of the employees on the interstate railways of the United States classified as to trades and occupations.

I furnish same herewith as taken from page 26 of Statistics of Railways in the United States for the year ended June 30, 1915. The statistics for 1916 are not yet compiled by the Interstate Commerce Commission.

In column No. 2 I venture an estimate of the percentage of the number organized in the several labor organizations or trade-unions of the occupations, and I base this estimate on the best available data.

Occupations printed in italic are those generally conceded by the courts to be actually engaged in the movement of interstate commerce. The others are still in the 'twilight zone,' sometimes placed in intrastate and at others in interstate commerce.

Yours, very truly,

ARTHUR E. HOLDER,  
Legislative Committee, American Federation of Labor.

*Statistics of railway employees engaged in interstate commerce in the United States, by class, trade, and occupation, year ended June 30, 1915.*

Class of employees, trade, occupation, etc.	Average number employed during year.	Average percentage organized.
General officers, \$3,000 per annum and upward	3,748	.....
General officers, below \$3,000 per annum	3,330	.....
Division officers, \$3,000 per annum and upward	1,027	.....
Division officers, below \$3,000 per annum	7,645	.....
Clerks, \$900 per annum and upward	54,225	20
Clerks, below \$900 per annum	89,845	.....
Messengers and attendants	8,131	.....
Assistant engineers and draftsmen	7,144	.....
Maintenance of way and structures foremen	6,171	.....
Section foremen	37,356	30
General foremen, M. E. department	1,486	.....
Gang and other foremen, M. E. department	14,205	.....
Machinists	32,972	70
Boiler makers	10,739	70
Blacksmiths	6,978	60
Masons and bricklayers	1,075	60
Structural-iron workers	1,789	60
Carpenters	43,361	30
Painters and upholsterers	8,761	30
Electricians	5,559	30
Air-brake men	4,781	70
Car inspectors	16,315	50
Car repairers	53,366	50
Other skilled labor	41,806	50
Mechanics' helpers and apprentices	64,356	30
Section men	214,083	.....
Other unskilled labor	90,572	.....
Foremen of construction gangs and work trains	2,452	.....
Other men of construction gangs and work trains	40,495	.....
Traveling agents and solicitors	4,942	.....
Employees in outside agencies	2,220	.....
Other traffic employees	1,122	.....
Train dispatchers and directors	4,686	25
Telegraphers, telephoners, and block operators	18,361	50
Telegraphers, telephoners operating interlockers	7,425	50
Levermen	2,903	50
Telegrapher-clerks	9,065	50
Agent-telegraphers	18,597	50
Station agents	14,168	50
Station masters and assistants	613	50
Station service	83,496	10
Yardmasters	3,122	80
Yardmaster's assistants	1,864	80
Yard engineers and motormen	12,192	90
Yard firemen and helpers	12,425	90
Yard conductors	11,716	90
Yard brakemen	30,523	90
Yard switch tenders	4,574	90
Other yard employees	4,656	30
Haulers	6,916	60
Enginehouse watchmen and laborers	35,856	.....
Road freight engineers and motormen	23,830	90
Road freight firemen and helpers	24,834	90
Road freight conductors	19,756	90
Road freight brakemen and flagmen	49,483	90
Road passenger engineers and motormen	11,817	90
Road passenger firemen and helpers	11,411	90
Road passenger conductors	9,936	90
Road passenger baggagemen	5,499	25
Road passenger brakemen and flagmen	13,560	50
Other road trainmen	3,742	30
Crossing flagmen and gatemen	14,541	.....
Drawbridge operators	1,192	.....
Floating-equipment employees	10,977	.....
Express-service employees	16	.....
Police and watchmen	7,470	.....
All other transportation employees	9,944	.....
All other employees	27,119	.....
Grand total number employees on railways engaged in interstate commerce in United States for year ended June 30, 1915	1,409,342	.....

Mr. DOAK. Whenever the services of the board under the old Erdman Act were invoked, of course, the two members of the board of mediation, or one of them, immediately put themselves into position to go into the details in connection with the controversy to try to effect a settlement, either the settlement of the entire question by mediation or to get the parties to submit to arbitration under the provisions of the act; and when they reached arbitration either party had a right to select one man, and they had five days in which to select the other arbitrator, and in the event of their failure, then the board itself appointed the third member of the board of arbitration.

That was the difference between the Erdman Act and the act of 1888. They must select under the old act of 1888, but under the Erdman Act it gave the Board of Mediation and Conciliation the right to select the arbitrator in the event of a disagreement or failure to select a third party.

When the award was rendered, it was effective and binding under the Erdman Act; that is, provided it was not appealed to the court for error of law apparent on the record.

During the first eight and one-half years of the existence of this act, from 1898 to about 1907, there was only one case handled under the provisions of the Erdman Act. During the next five years, from 1907 to 1912, it was used more than sixty times with marked success. The law continued in effect until July 15, 1913, at which time the act was amended by the enactment of the Newlands Act, and after having been in existence for about 15 years.

Senator POMERENE. May I ask you to explain just one statement that you made? You say that during this latter period it was used more than 60 times with marked success. Do you mean by that to have it inferred that there were other times in which it was not used with success or with indifferent success?

Mr. DOAK. It was used but one time before this; but in the last five and a half years of its existence it was used more than 60 times. For more than eight years it was used only once. Then it was used 60 times in the latter part of that period, and when I use the words "marked success" I mean that in each instance there was a settlement reached. Whether it was satisfactory to both parties or not is another question; but, anyway, so far as the public was concerned, or anyone was concerned, when we had no strikes or any trouble, it was used with marked success. That is the effect of the settlement under the provisions of the law.

The amendment to the Newlands Act, of course, provided for a change in the personnel of the board to the three members of the Board of Mediation and Conciliation under the Newlands Act, and it also provided that if it was desired to have more than three arbitrators in a case the board could be increased to six, and that the two contending parties would select two, and they had five days in which to select two more, and if they disagreed, the Board of Mediation and Conciliation appointed the other members.

Practically the provisions as to the handing down of the award and everything in connection with it were carried forward in the Newlands Act from the old Erdman Act, and the only difference was that when the award was handed down they would file it. It must be filed with the court, and then if there was no appeal taken from the decision of error of law apparent on the record within 10 days

it would become binding, and if there was an appeal taken and they were not satisfied with the district court's decision an appeal could be taken to the circuit court but no further.

In substance that is the difference between the two laws. This law has been in effect for three and a half years, and there have been handled under this act 74 or 75 controversies, and an adjustment and settlement has been reached in all of these cases but two, either by mediation and conciliation or by arbitration. Up until May 15, 1916, there had been 56 controversies handled under this act, 45 cases were settled by mediation and 11 by mediation and arbitration. Out of these 56 application was made by the employees in 20 cases, application by the railroads in 13 cases, and in 15 cases the railroads and their employees made joint application. In 8 cases the board offered its services, which were accepted. From July 15, 1913, to May 15, 1916, every case was settled without a strike or inconvenience to the public. Of the cases handled there were some involving the employees of great territories of the United States and an adjustment was had in each case.

The only serious failure to bring the parties together was the so-called eight-hour movement in August of last year, and this was through no fault of the employees or the Board of Mediation and Conciliation; neither was it the fault of the President of the United States, but squarely the fault of the railroads themselves.

Senator POINDEXTER. What do you base that statement on? Give your reasons for that statement.

Mr. DOAK. During December, 1915, the employees in train and engine service, through their representatives, prepared and submitted to a referendum vote of the employees in engine and train service of the United States a request for a 12½ miles per hour basis in freight service and an eight-hour day in yard and hostlering service, and by the vote of nearly 100 per cent of these employees this matter was approved and on March 30, 1916, was simultaneously filed with the management of practically every railway in the United States, giving until April 29, 1916, in which to reply thereto. This matter was carried over by the appointment of a conference committee of managers representing the railroads and the officers of the organizations until June 1, at which time negotiations were commenced, resulting in a refusal on the part of the managers' conference committee, speaking for the railways, to grant the request of the employees but suggesting that, in the event of the application of the request of the employees, it would be applied in such a manner as to take away many things in the existing schedules and agreements of the employees that had been built up by years of negotiations between the employers and the employees. This request of the managers was declined, a strike vote was taken, resulting in the men largely sustaining the position of the officers of the organizations in declining to accept the managers' proposition. It is also noted that the managers of different properties refused to authorize the conference committee of managers to speak for them on a great number of the small properties; to be exact, about 75 in number.

Senator TOWNSEND. Before you proceed further I wish you would make it a little clearer to me what that eight-hour demand was for.

Mr. DOAK. If you will pardon me, Senator, until I get through with this, I will explain it to you.

Senator TOWNSEND. All right

Mr. DOAK. Where it was thought the men could be defeated on other lines exempting a great number of employees who were organized, and this despite the fact the men themselves had signified their willingness for the organizations to speak for them. Conferences were resumed on August 8 and the position of the employees placed before the managers' conference committee, and then mediation was sought by the managers, and the Board of Mediation and Conciliation tendered their good offices but were unable to reach an adjustment of the pending controversy, because the managers' conference committee refused to grant the demands of the employees and refused to withdraw their request for the taking out of the schedules of the many things that they had been years in building up.

The position of the employees was that these questions were not subjects for arbitration, and that they honestly were contending for a shorter work-day, with punitive overtime at the rate of time and one-half, not to increase wages, but to enforce the application of the shorter work day.

The President of the United States requested both parties to come to Washington, and he submitted a proposition to both parties, suggesting the acceptance of same as a basis of settlement. The President sustained the position of the employees that the eight-hour day was an established fact, and not an arbitrable question. He requested the employees to withdraw their request for punitive overtime, and the managers to grant the so-called eight-hour day, and that he would appoint a commission to observe the operation of the eight-hour day and make a report of its findings, with recommendations, after which the matter could then be taken up by either party the same as before, if not satisfied.

Senator BRANDEGEE. Would you permit me there to make a suggestion? I want to ask to have it go into the record, unless you are willing to at this point, because you have a right to control your own remarks. But I find here in the hearings on the Adamson bill, which is published as Senate Document No. 549, first session of the Sixty-fourth Congress, on pages 39, 40, and 41, Mr. Garretson put into his testimony the correspondence between himself and the President in relation to this matter, showing exactly what the propositions were, and I would like to have it go into the record at some point, and if you do not want it to go in as a part of your examination, I will ask that it go in later, subsequently. I simply mention it because you are touching on that very feature now.

Mr. DOAK. Yes, sir; and, Senator, I will state exactly why I am doing so.

Senator BRANDEGEE. I did not ask you to make that statement. I simply asked you whether you wanted this to go into your remarks, or to go in separately?

Mr. DOAK. I would be very much pleased to state why I reviewed this. You have heard a great deal said at these hearings about the employees being responsible for this condition which arose here last summer, and that the tendency is to curb the employees, and we are trying to show that they were not responsible for the condition which has evidently led up to the agitation for the present legislation.

Senator BRANDEGEE. I know that. I do not think you exactly understand my question, and I will withdraw the whole thing for the present.

Mr. DOAK. I think I do understand it. However, there is not very much touching on that. I was just about through.

Senator BRANDEGEE. Very well. The President went further and guaranteed to the railroads that no obstacle of law would stand in the way of their increasing their revenue to meet the increased burdens brought about by the application of the eight-hour day. But it must be ascertained positively that this was brought about by the application of the eight-hour day, and not based on conjectural propositions. In other words, there is no way of investigating the application of an eight-hour day, or a basic eight-hour day, only by putting it into effect itself. You could not possibly investigate the conditions surrounding its application until it was applied. You might say you could take a ten-hour day, and see how it worked out, and changed any operation of a railroad, changed conditions; that if an eight-hour day was in effect, it would materially affect the question. Consequently it was something that had to be applied before you could ascertain the exact cost of it.

Senator CUMMINS. Mr. Doak, let me understand you there. Your demand was for a speed of  $12\frac{1}{2}$  miles per hour in the movement of freight trains, and for punitive overtime, believing that punitive overtime would have a tendency to reduce the actual working day to eight hours; is that your position?

Mr. DOAK. Yes, sir.

Senator CUMMINS. You did not demand that the railroads in the movement of their trains immediately come to an eight-hour day; that is, a provision that would make it unlawful for men to work more than eight hours in the movement of trains, but you hoped to reach the eight-hour day through increasing the speed of trains, and punitive overtime?

Mr. DOAK. You are quite correct, Senator. I was going to explain that for the Senator just as quick as I could a little further along. I might as well do it now, while we are at this point. As no doubt you understand, a great number of you do, we have a speed basis on practically all the railroads in the United States, and Canada as well, providing in some instances for 10 miles per hour. The running time on a 10-mile-an-hour speed basis would be 10 hours for 100 miles. On others we have 11-miles-per-hour speed basis, which would be 9 hours and 5 minutes for 100 miles. On some we have 12, on others we have  $12\frac{1}{2}$ , and in one or more instances they have 15 miles an hour as a speed basis. That is for crews in freight service, road freight service. The request of the employees was for a  $12\frac{1}{2}$ -miles-an-hour speed basis, which would be 8 hours for 100 miles, on the running time basis. Overtime would be conditioned in every instance upon the length of the run. If the run was 100 miles, overtime would commence after 8 hours; if it was 150 miles, it would commence after 12 hours, and there was no change, no desire to change the terminals, or change the runs, but to simply speed the trains up in some instances  $2\frac{1}{2}$  miles an hour, in others  $1\frac{1}{2}$ , in some  $\frac{1}{2}$ , and in some none, and in one instance, if we had put this in effect, at least, it would have been a reduction from 15 to  $12\frac{1}{2}$ .

In yard service and in hostling service, where the crews could be released, where they were right at one point, or in a small radius, providing for an 8-hour day, most of the yard service in this country, practically all of it, is on a 10-hour basis, with the exception of

one road, I think in New England, and possibly one or two others. they all have an 8-hour day in yard service, while one road particular, a small road, is still on the old 12-hour day proposition.

Senator POINDEXTER. Is any large road on the 8-hour day basis?

Mr. DOAK. The New York, New Haven & Hartford is.

Mr. POINDEXTER. It seems to have been disastrous in that case. That is a very poor example.

Senator POMERENE. Which, of the 8-hour day?

Senator POINDEXTER. Yes.

Mr. DOAK. I will say. Senator, that the application of the 8-hour day on the New Haven system was in effect when they were paying an 8 per cent dividend over there.

Senator POINDEXTER. I was just joking.

Senator BRANDEGEE. Will you let me ask you there, when these agreements are made between the managers of the railroad properties, and the brotherhoods of trainmen, are they signed on behalf of the brotherhoods by the officials of the brotherhoods in the shape of a contract?

Mr. DOAK. They generally are; but not in all instances.

Senator BRANDEGEE. It is not a contract with the individual men who compose the brotherhood, the individual members, is it, except in so far as they authorize their officials to sign for them?

Mr. DOAK. They have a power of attorney just the same as your attorney would sign up an agreement for you, or anything.

Senator BRANDEGEE. They usually are signed and run for some period of time named in the agreement?

Mr. DOAK. No; there is no time named, but the usual tacit understanding is that it will be in force not less than 12 months, and there is contained in a great number of schedules a provision that 30 days' notice by either party of a change will be given, and in some they have nothing of the kind. We work on a system that is different, possibly, to the system the mine workers work under. They make an agreement, say, for three years, and when that expires they usually quit until they sign another one. Ours are always in effect. They say, "On and after such and such a date the following rates of pay and conditions will govern."

Senator BRANDEGEE. The idea is that until otherwise changed those conditions shall prevail?

Mr. DOAK. Yes, sir.

Senator BRANDEGEE. Now, is it a contract which either party can enforce in a court of law, for instance?

Mr. DOAK. In a strict sense I do not know that we have had any case of that kind.

Senator BRANDEGEE. No brotherhood has ever attempted to compel a railroad company to live up to it, or anything of that kind?

Mr. DOAK. No. Here is the way we always do that. If they do not live up to the agreement we generally use the strength of the organization to make them do it, and the most of these controversies generally that arise, that have arisen, and are constantly arising all over the country have not been so much from the question of the increase in pay or change of working conditions, but over the carrying out of the agreement or over some discipline case or something of that kind.

Senator CUMMINS. Now, just see if I fully understand that situation. You presented this change in basis for movement of trains and the eight-hour day for what might be called the stationary or yard service, and the railroads said to you that they would not consider that, unless you at the same time would go over with them and revise certain other privileges which had been from time to time agreed upon as fixing the conditions of service or of the pay for service? That was their first reply to you?

Mr. DOAK. Not exactly the way you put it, Senator. They said they never did, now mark you, agree to grant the eight-hour day, but they said, "In face of an eight-hour day being applied we will apply thus and so."

Senator CUMMINS. That is, if they did grant it, then it would abrogate some of these other arrangements that had been made in the long course of years?

Mr. DOAK. Absolutely. It would have turned down every agreement, in substance, that we had been years in building up. It would have taken away our first in and first out rule, our rules at terminals, and all those rules we have spent thousands and thousands of dollars in putting in our schedules. They said they would apply it in such a way that it would take those things away from us.

Senator CUMMINS. And that then they would consider the proposition? Did they say they would grant this new basis?

Mr. DOAK. They never have yet said they would grant it to us. They said that if an eight-hour day was applied they would apply it thus and so. In other words, they used this term—they used the term "yardstick," that they would apply or measure schedules by, and that yardstick meant the measuring out of existence many of the things that we had been for years in building up.

Senator CUMMINS. Now, then, let me see if I understand the next step. You declined any such basis as that for negotiation?

Mr. DOAK. Yes, sir.

Senator CUMMINS. Then, finally it came to a point where the railroads said they were willing to arbitrate the whole subject; is that right?

Mr. DOAK. They would put the yardstick and the request of the employees in the jackpot, and we would take a chance of losing what we had been 25, 30, or 40 years in building up, and submitting it to a board of arbitration, Senator, to see whether or not we were entitled to what we had already paid for.

Senator CUMMINS. I know; but nevertheless it means the same thing. They said they were willing to arbitrate the whole thing. It is very plain that the yardstick would abrogate your privileges as well as the yardstick itself.

Mr. DOAK. Sure.

Senator POINDEXTER. Did they ever offer to arbitrate the eight-hour day proposition alone?

Mr. DOAK. No, sir; and there was a question of principle involved there with these organizations that no member of this committee, I dare say, if it had been in our position, would ever have submitted to.

Senator BRANDEGEE. Let him state what that principle was, before you go on with your questions.



Mr. DOAK. Yes.

Senator BRANDEGEE. What was that principle which you say nobody would have submitted to arbitration?

Mr. DOAK. The principle was these things that they had bought and paid for. I can best illustrate it, I think, by a case of this kind: You buy a house over here and you pay for it on time by hard work. It takes you years to pay for it, and the day, or shortly after, you get it paid for I will come along and say, "Give me that house." You say you won't do it, and we get in a controversy about it, and I then make a proposition to you that we arbitrate that question—the ownership of that house. I think that is the best illustration of the case of anything I know of.

Senator ROBINSON. Your contention was that these other matters the railroads sought to have arbitrated were already settled?

Mr. DOAK. Absolutely had been settled, some of them for years.

Senator CUMMINS. I think we would understand it better if you would give us an instance of one of the cases that was in your mind.

Senator POMERENE. Not only one, but as many as you have in your mind. I would like to have it, if there is no objection to it.

Senator CUMMINS. No; I would be glad to have them all.

Mr. DOAK. That is just what I was going to say. For instance, we have a rule, which has been acknowledged and executed for years, that in pool service the crew that arrives first at the terminal goes out first in that pool. Under this provision they would run the men any way they wanted to—take that away from them.

Senator ROBINSON. That might result in some men getting very little employment and others getting all they desired?

Mr. DOAK. It would; and produce confusion and absolutely destroy the principle of the handling of these matters; and it does this, Senator. It would absolutely license them to exercise favoritism and run their favorites out, you see.

Senator ROBINSON. That is what I meant.

Mr. DOAK. Run out who they wanted to and leave in whom they wanted to. And there might be, for instance, a fast train in this pool which would be handled by this pool crew; instead of giving it to the first man out, they would give it to whom they wanted to, and the other fellow would take a drag out over the road.

Senator ROBINSON. That was necessary in order to protect the employees and secure to all of them an equal opportunity in their employment and to prevent favoritism?

Mr. DOAK. Yes, sir.

Senator ROBINSON. Now, at the time you presented this demand for an eight-hour days, the so-called eight-hour day, was there any controversy between the railroads and the employees concerning the first man in and first man out?

Mr. DOAK. Absolutely no.

The CHAIRMAN. But is it not possible, if all of these questions had been submitted to arbitration, that the rule which was previously existing, and which seems to be so new, would have been included?

Mr. DOAK. It is not possible, Senator. It is not possible to have gone into an agreement of that kind and come out with anything that would have been acceptable to the employees, and we knew it. As a matter of fact, I think that the men who have carefully gone into this thing, even the President himself, was convinced that it was

not the logical thing to do—to take those questions that were not arbitrable matters and place them in and have them arbitrated.

The CHAIRMAN. Were not some of the rules and practices which had been established as the result of agreement or understanding between the employees and the railroads—were not some of them such as would logically follow if the new arrangement with reference to the eight-hour day was carried out?

Mr. DOAK. To a great extent. This proposition was one of the simplest things in the world.

The CHAIRMAN. That one does seem to be very simple, indeed; the one you have suggested.

Mr. DOAK. It needed no rearrangement of the schedules, unless only to this extent. It was so simple that anyone could readily understand it. Where we had, for instance, in that agreement an 11-mile-an-hour speed basis or a 10-mile-an-hour speed basis, substitute  $12\frac{1}{2}$  miles for the 11 or the 10 or 12; or where we had an hourly basis, a 10-hour day, an 11-hour day, or a 9-hour day, whatever was specified, we simply changed the day to 8, and that covered the whole situation. It just simply changed the basis of overtime to time and a half time, or from pro rata to time and a half time. But, in the final analysis, we dropped it at the suggestion of the President. The time and a half time basis and the overtime basis would have been prorated as it had been in the past.

Senator BRANDEGEE. Does this rule of first in and first out apply to each individual, or to the whole train crew that first arrives?

Mr. DOAK. Now, you understand, the engineers have a board, the firemen have a board, the brakemen have a board, the conductors have a board.

Senator BRANDEGEE. You mean a bulletin board?

Mr. DOAK. No; they have a board, what we term a "board," which just simply gives—whenever a crew comes in, say you are the first man in, you register, and you are on that board, on that list to go out first, and the next man goes out next.

Senator BRANDEGEE. So that the whole crew that comes in on a train is not sent out as a solid crew on the next train always?

Mr. DOAK. Not always; but the conductors and brakemen, you understand, are assigned to a caboose, or to a run, together, and the engineer and fireman, but not necessarily. It would depend. If they had exactly the same number of engines and train crews, it is possible that they would go for months that way without change or just a little change, a man getting off, or a thing of that kind. Just a little change, of course, would upset that arrangement.

Senator POINDEXTER. Would the adoption of the principle that you fought for, the so-called eight-hour-day proposition, have resulted in any disarrangement or confusion of the operation of trains?

Mr. DOAK. Speaking from the companies' standpoint?

Senator POINDEXTER. Speaking from anybody's standpoint?

Mr. DOAK. I do not know as it would have disarranged it, but it would have disarranged the rights of the men, and everything they have would simply have gone up in the air.

Senator POINDEXTER. You evidently do not understand what I asked you.

Mr. DOAK. I do not understand what you are trying to get at.

Senator POINDEXTER. Just read the question. I think it is clear enough.

(The stenographer read as follows:)

Would the adoption of the principle that you fought for, the so-called eight-hour-day proposition, have resulted in any disarrangement or confusion of the operation of trains?

Mr. DOAK. Oh, I understand now. I thought you meant had they put this yardstick in operation. Why, I do not see that it would have in any way interfered with the operation of the trains at all.

Senator POINDEXTER. Well, the principal question involved in this case that is now being argued in the Supreme Court is that it is contended by the railroads that the rule is impossible of operation, because it would throw the whole conduct of railroad transportation into a state of confusion, and you say you do not know whether that is the case or not?

Mr. DOAK. Why, I said to the contrary, that I did not think it would affect them at all.

Senator POINDEXTER. You do not think it would affect them?

Mr. DOAK. No.

Senator POINDEXTER. Are you not a railroad man?

Mr. DOAK. Yes.

Senator POINDEXTER. Then, don't you know one way or the other about it?

Mr. DOAK. Do you know to the contrary, or do the railroads know that it would positively throw them into confusion?

Senator POINDEXTER. I am asking for information.

Mr. DOAK. I can not see where it would throw them into confusion at all. Now, there is a difference possibly between the contention being put up in the Supreme Court and the real proposition presented by the employees. No doubt the contention ~~is~~ being to-day placed before the Supreme Court—I do not know; I have not been over there—that this means a positive eight-hour day. It never was intended to be positively an eight-hour day. The employees never contended for that. They only asked for a twelve and a half mile an hour speed basis, and had that been granted it would not have changed one iota or disarranged the service particle.

Senator BRANDEGEE. Well, you know, do you not, that the Solicitor General claimed in the Supreme Court yesterday that the bill was strictly, I understood him to say, a just bill, and has contended it is constitutional on that ground.

Mr. DOAK. I quite understand that, while I did not hear the argument of the Solicitor General; but in the final analysis, may I ask you if it is not, after this period of investigation and the 30 days? Then there is nothing in the law that says what the rate of pay will be; that only the rates of pay in the bill as passed, going to the Adamson bill, now, as passed, only provided that there would be no reduction during the period of investigation and for 30 days thereafter. If the constitutionality of the law is upheld, and the six or nine months and the month thereafter goes around, then there is not a thing in the law that says, or could mean in any way or be construed to mean in any way, a wage bill. It only, then, goes back to the same 16-hour proposition, possibly back to the service period.

Senator ROBINSON. The provision that eight hours shall be the measure of a day's work and remain in force even after the expiration

of the period when, in order to prevent confusion, the existing wages were held applicable.

Mr. DOAK. That is the only point of the law that does remain in effect after that period.

Senator BRANDEGEE. But it says that eight hours shall be a day's work, for the purpose of ascertaining the compensation to be paid, does it not? I do not think there is much use of our arguing the Adamson bill in this hearing myself.

Mr. DOAK. I think it would possibly be improper, in view of the fact that the Supreme Court has it up now.

Senator BRANDEGEE. I do not think they will object to having our opinion about the Adamson bill.

Senator CUMMINS. Coming back to the demand made by the men, and forgetting the Adamson law for a moment, suppose the railroads had granted the demand made by the men, it would not have been an agreement with regard to the wages that would be paid to the men, would it? Suppose they had accepted that twelve and a half hour demand, and had reduced the day's work in that fashion, would it have been an agreement between the men and the railroads to pay the same for working 8 hours that they formerly paid for working 10?

Mr. DOAK. Well, the proposition, as submitted, provided for that period, Senator. It said there would be no reduction, in other words.

Senator CUMMINS. That was a part of your demand?

Mr. DOAK. Oh, yes; yes, sir.

Senator CUMMINS. Well, that is the point I wanted to get.

Mr. DOAK. Oh, yes.

Senator BRANDEGEE. But if you speed up so as to run at the rate of  $12\frac{1}{2}$  miles an hour, you might do a 100-mile run in 8 hours instead of 10, and then you would get a day's pay for your 8-hours' work?

Mr. DOAK. It would not have cost the railroads a cent.

Senator BRANDEGEE. I mean that would have been the effect of it.

Mr. DOAK. Yes; that is it.

The CHAIRMAN. It would not have cost the railroads anything, unless it required more coal for the faster run, and unless they had to change the construction of their tracks, and add sidetracks, etc., in order to adapt themselves to the increased speed; is not that so?

Mr. DOAK. But, Senator, I do not think that that cost could be figured at all. It would not cost them anything in wages at all. It might cost them in coal, but I do not think it would. I think it would cost them more for coal to put more tonnage on an engine than it could reasonably haul over a road than it would to cut the tonnage a little bit and get over the road a little quicker.

The CHAIRMAN. It might have resulted in trains with less cars and an increase in the number of trains, might it not?

Mr. DOAK. It might have done so, but I do not know. It is not always exactly the tonnage question that figures in. It is knowing that you have got to get a man over the road in a certain time or pay him a penalty for not getting him over a road. It is a simple operating proposition. If a dispatcher—I won't accuse anybody in particular—but if a dispatcher has 10 hours or 12 hours or 15 hours to get a man over a road he is not going to jog him along to get him over the road in 8 or 10 or 9, but when he gets down close to the 16-hour law; where there is a penalty, then they get busy.

Senator CUMMINS. He would be a little more careful to keep trains out of the way?

Mr. DOAK. Yes, sir.

The CHAIRMAN. You think it would result in better, more efficient administration?

Mr. DOAK. I do not think there is any question but what it would be a decided benefit to the American public if we had the speed basis.

The CHAIRMAN. I want to get at the facts. Is it not a fact that on many of these roads, or some of them, at least, the change in the speed of the trains would necessitate some change in their construction, additional sidetracks, and things of that kind?

Mr. DOAK. I can not see that point at all, where it would.

The CHAIRMAN. I do not know, I am sure.

Mr. DOAK. Not in the least. On the contrary, if you had to keep the train moving over the road there would be no incentive to put it on a sidetrack. It would just have, in my opinion, the opposite effect.

The CHAIRMAN. Well, might it not necessitate double-tracking? Of course, if you have two tracks, I imagine the trains can move much faster than they can on a single track.

Mr. DOAK. Well, with the great majority of the big roads in this country the question of double tracking has long been settled; and, as a matter of fact, they have gone over and have built even three or four tracks.

The CHAIRMAN. I had the impression that the double-track roads of the country did not equal one-half of the mileage.

Mr. DOAK. The larger roads, where they have the larger amount of business or traffic, are double-tracked, that have the big traffic that you speak of, that you evidently had in mind.

The CHAIRMAN. What percentage of the total mileage is that; do you know?

Mr. DOAK. I do not know. I could not give you that offhand.

The CHAIRMAN. My impression is that it is very much less than one-half.

Mr. DOAK. I could not give you that off-handed, but where they have the heavy traffic that you mentioned, the tracks of those roads are largely all double. While it is true that you could take some of these roads that run out here in certain places for miles and miles, that do not produce any revenue, or do not move many trains over them, or very few trains operate over them, you might be right—that it might exist—but the heavy traffic roads, or most of them are double-tracked.

Senator POMERENE. May I ask you another question?

Mr. DOAK. Yes, sir.

Senator POMERENE. During the hearings on the Adamson bill, and repeatedly since, I have heard the statement that the brotherhoods did not want the eight-hour law in fact, or the eight-hour day, rather, but what they were wanting was an increase in their pay, and they were using the eight-hour rule simply as a means of getting the increased pay.

Mr. DOAK. I would not like to accuse anybody of misrepresenting facts, but that statement is incorrect.

Senator POMERENE. I wanted your statement about it; that is all.

Mr. DOAK. That was not the intention. Now, Senator, I will tell you. I went through these conferences. I was on the committee

that drafted the original proposition. I helped to canvass the vote on the proposition—that is, the referendum proposition—that had been submitted to the men whether or not it was acceptable, and followed it through until—I was not here when the law was passed. I was elsewhere; but was up her just a few days before that, and I will say to you honestly that that statement coming from anybody is not correct. We did not ask, mark you, that they would stop the men whenever the eight hours were up, but we did honestly want, and it was the intention of every man in this country, not to get an increase in pay but a shorter working-day, and when it comes to the facts—I suppose the railroads themselves would not like to have it; they would rather have a 12½-mile-an-hour speed basis than they would have a positive eight-hour day, laying aside the cost.

Senator POMERENE. Then the real object of the brotherhoods in asking for time-and-a-half pay for any time over eight hours was not for the purpose of increasing their compensation but for the purpose of penalizing overtime?

Mr. DOAK. That is it exactly. I know that was what was back of all of it. Shall I proceed?

Senator POMERENE. Go on.

Mr. DOAK. I think we have pretty thoroughly gone over what led up to the settlement. Now, the provision of Senator Newlands's bill is that there be a period of investigation, and, as I said before, it was, as I understand, and by comparing it with the Canadian industrial-disputes act, copied largely after the act in Canada, during which time there will be, while this commission is investigating, there will be—everything is supposed to remain in status quo. I would like to ask Senator Newlands, if you will pardon me now, to explain as to a lockout, just what he means by the provision there, if not out of order.

Senator ROBINSON. You mean the definition of lockout, as contained in the bill?

Mr. DOAK. Yes; just what he had in mind. The reason I ask this, Mr. Chairman, is because the language defining a lockout in the Canadian act, as compared with this, has been changed.

The CHAIRMAN. In what particular has it been changed?

Mr. DOAK. Well, this has been added: "For reasons other than personal skill, capacity, or fitness."

The CHAIRMAN. Those words are left out in this?

Mr. ROBINSON. No; they are contained in your bill, and are not found in the Canadian act.

The CHAIRMAN. Well, I think it means what it says.

Mr. DOAK. Well, we have always found that in certain language that what was intended was not always applied. My reason in bringing this out was this. That is as broad as the scope of the country, and that would absolutely tie the men under the strike provision, and would license the railroads to do anything they wanted to, and the term, "lockout," there, is absolutely, as I see it, and as we think is to be applied, of no benefit whatever. That is one objection to this measure.

The CHAIRMAN. Can you suggest an amendment to that definition of the term "lockout"? Would you strike out those words?

Mr. DOAK. I want to know why they were put in there.

The CHAIRMAN. They were put in there for the purpose manifest, that there was no desire to prevent the railroads from letting out from their employment a man whose personal skill, capacity, or fitness for the job was—who was either not personally skilled, or who had not the capacity or fitness for the job.

Senator CUMMINS. I suppose what Mr. Doak means is this: It would be very easy for a railroad manager to believe that anyone that demanded a strike was not a fit man for a job.

Senator ROBINSON. And justify it on the ground that the person locked out did not possess the necessary skill, capacity, or fitness.

Mr. DOAK. And so recently was that brought to my mind. Less than a month ago I settled, under mediation, a case growing out of the eight-hour controversy, in which a negro was dismissed simply because he dared to vote for a strike, or dared to say that if the white men left the service, that he was going with them, and it took the strength of the four organizations on the railroad to reinstate that man.

The CHAIRMAN. You do not think that they——

Mr. DOAK. He was not fit.

The CHAIRMAN. You do not think that they would justify, under the language of this act, the exclusion of that man from employment, do you?

Mr. DOAK. Why, it would. They served notice on the men, during this last movement, that if they voted a strike, they would discharge them; if they had anything to do with the movement, they would discharge them.

The CHAIRMAN. But that would be a violation of this law, would it not?

Mr. DOAK. No; absolutely no. They would come in and say, as you use the term, "fitness," or any of those other things, or personal skill, and you would not have the right to go and protest against that, and you would have absolutely no right to say anything.

The CHAIRMAN. I think you would. Of course, the railroad could disobey this act, and could assign a false reason for doing so, but if the reason did not involve the assumption that the person was unskilled, or had not capacity, or was unfit for the job, well, that reason would avail.

Senator POMERENE. Why would it not meet your position to strike out the word "fitness," and leave it, "for reasons other than personal skill or capacity"?

The CHAIRMAN. You might change the language. All it is intended to do is to not compel the railroad to keep in its employ a man who is insane or who lacks capacity or fitness for the job.

Mr. DOAK. Why, sure not; but, then, who is the judge?

The CHAIRMAN. Well, I imagine in this case the court would be, if finally tested.

Mr. DOAK. No; the only way we can judge those things is to go in there and show our strength and what the organization wanted.

The CHAIRMAN. But there would be simply the judgment of one organization against the other, your organization stating that a man was fit and the railroad insisting that he was unfit.

Mr. DOAK. We have never gone into a case like that and gotten away with it, Senator.

The CHAIRMAN. If he was fit when the railroad declared him to be unfit, the discharge of a man under this act would constitute a violation of the act.

Mr. DOAK. We have never been able to get away with anything like that at all, and we will never. I can speak for these officers. I have had dealings with all of them in these four organizations, and whenever they go in and the fellow is not delivering the goods they invariably throw his case out of court. But it is under a subterfuge here in a case of this kind. And, furthermore, if you are going to honestly conduct, or have the matter remain in status quo while an investigation is being made, why do you not provide, if it is necessary to have an investigation—why do you not provide against the employment of strike breakers and the stoppage of the purchase of arms and ammunition and things like that to prosecute the strike? We have gone through mediation under the Newlands Act.

The CHAIRMAN. We would be glad to have you suggest any amendments which you desire.

Mr. DOAK. We have gone through mediation under the Newlands Act, and when we were at New York, when the Federal mediators were in conference with the contending parties, and when they were in Washington in conference with the President of the United States, and when Congress itself was debating on these questions, the railroads were employing every strike breaker they could employ. Not only that, but we have information, as was given out in the public press, that they were purchasing arms and ammunition. What for? For the purpose evidently of defeating the purpose of the employees. We have had case after case. We have had to go out over this country just since that time on cases that have arisen where men have been discriminated against on account of this act. No; that absolutely turns us over, lock, stock, and barrel, and ties our hands for a period of four months, during which time preparations can be made and will be made to defeat the purposes of the employees; and we are not speaking from hearsay, but from actual experience in the past. I was in a case just recently.

The CHAIRMAN. You say organization will be made during that time to defeat the purposes of the employees. What is the purpose of the employees? Is it simply to get an increase of wages or a diminution of hours, or some other matter, or is it to so paralyze the operations of the trains as to compel the yielding of the railroads to the operatives' demands?

Mr. DOAK. Well, Senator, in the name of goodness, may I ask what recourse on earth have these employees on these railroads when there is a combination under which, gentlemen—you can talk about your combinations and pass your antitrust laws if you want, but there is nothing in the antitrust laws of this country that prohibits the railroads from combining against their employees, and if this act is passed there is nothing that will prevent them from combining against the employees, and we have a combination of sixteen or eighteen or twenty billions of dollars capital, and the only weapon we have to defend ourselves as individual employees from these corporations is the strength of these organizations and the right to strike.

The CHAIRMAN. Well, you say what other recourse is there except the right to strike and, in connection with that, the power to paralyze



the operation of trains in interstate commerce, unless your demands are complied with. Now, I will admit that practically under existing law there is no other recourse, but it is disgraceful to civilized society, it seems to me, to a civilized Government such as ours pretends to be, if no other recourse is provided, and we are trying now to provide a recourse, some system under which reason will be applied in the settlement of these disputes, instead of force.

Mr. DOAK. No doubt you are honest Senator.

The CHAIRMAN. I think you will realize that ultimately your strike can not be successful, unless you can paralyze the operation of the trains, and that involves a great cruel wrong upon society at large. Now, then, that is force, that is real force, and force used by the few against the many, and inflicting a great wrong upon all of the people of the United States.

Now, what we are trying to do is to find some recourse under the law. I admit, as you say, that under existing law there is no other recourse for the railway employees who claim that they are the victims of injustice, and who demand some change in their relations with their employers, except to strike, and, incidentally, to tie up the operations of the interstate commerce of the country. Now, we are trying to organize some other system.

Mr. DOAK. No doubt you are.

The CHAIRMAN. To substitute law for violence.

Mr. DOAK. But in so doing, Senator, here is what you have done. If this law goes into effect, you have tied us and enslaved us, to the detriment of these employees, and simply taken away from us, in the interest of society, the only weapon that we have to defend ourselves with, without giving us a recourse, possibly, in the end.

The CHAIRMAN. I should be very sorry to see that done, and would be very glad to have any suggestion of an amendment to this bill in any way, an amendment to the definition of the term, "lockout."

Mr. DOAK. Senator, I want to say this to you. You might think that you have not done us a harm, but in the final analysis, with this law, with any change in the present law, you have simply given our opponents four months, or three months, or whatever period it may be, in which to prepare, during which time you are making your investigations, and you make your report. We can not do anything, the employees have no opportunity, and never have done anything after the strike vote is delivered to us. That is all the preparation we can make, all we do make, but the other fellows—this law applies to every line of railroad, regardless of its size, with the exception of independently owned and operated railroads of 100 miles or less in length. You take on a railroad you have recently gone through a situation of that kind where there were 1,800 men employed, all told, in all four organizations, of all classes involved. They appealed from mediation, and had the assurance that a member of the Board of Mediation and Conciliation was coming there to use his good offices to effect a settlement, which he did, but all the time the railroad was hiring every strike breaker that they could get from all over the country, importing them in there, to defeat the purpose of the employees. It is going to apply to every one of them. It applies to the road with 200 men on it, the same as it does where there are 10,000, or the case of a strike where there are 500,000 men,

and you have turned us over bodily to the forces, and defeated our purposes.

Now, I want to tell you how, under the present law, under the present Newlands Act, we defeated the purpose of the managers. We simply said to them that we would not accept mediation under any circumstances, and we would put the strike on unless they took those men off of the property, and through the good work of the Board of Mediation and Conciliation, they made them remove the strike breakers off of the property before they would come in and take up the case. With this law we would have been there, and they would have prepared and kept them there, and we would not have got any settlement. As it was, we got a good settlement, and everything was settled, and restored peace and harmony between the employer and the employee on the property. I had a letter this morning, saying that despite the fact of the seriousness of the situation, that there is absolute harmony and peace prevailing there now between the two parties, where before they had had trouble.

The CHAIRMAN. Mr. Doak, we will have to adjourn now. I want to call your attention, before we close, to this proposition, and I would like you to remember it to-morrow. It is possible that the employees may be engaged in a very praiseworthy effort to redress their grievances, and it is possible that that effort may be resisted by the railroad managers. Now, in addition, the railway operatives propose to strike upon a certain day. It is the duty of the railway managers to keep those trains moving, under the law. All we contend is that they should be aided by the law in keeping those trains moving; not that they should be justified in resorting to illegal methods to keep them moving, resort to force and violence, but it is clearly their duty to keep those trains moving, and, incidentally, to get the men who will move them, and who are willing to move them. Now, I want to ask you what suggestion you have got to make with reference to changes in the law that will enable the railroads to keep these trains moving, as it is obviously their duty to do.

Mr. DOAK. Yes; but is there a positive law which says they must, under such circumstances, keep them moving?

The CHAIRMAN. Of course it is; under any circumstances, it is their duty to keep the trains moving.

Mr. DOAK. Now, on that question, since it has been brought up, I would be very glad to see the law which compels them to operate the trains and penalize them if the employees tie up the railroads.

The CHAIRMAN. We would like to hear you on that point to-morrow, Mr. Doak.

Mr. DOAK. Information is what I want. I want to see the law on it.

(Whereupon, the committee adjourned until to-morrow, Wednesday, January 10, 1917, at 10 o'clock a. m.)



# GOVERNMENT INVESTIGATION OF RAILWAY DISPUTES.

WEDNESDAY, JANUARY 10, 1917.

UNITED STATES SENATE,  
COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The committee met at 10 o'clock a. m., in room 326, Senate Office Building, Senator Francis G. Newlands (chairman), presiding.

Present: Senators Cummins, Brandegee, Robinson, and Pomerene.

The CHAIRMAN. The committee will come to order. Mr. Doak, are you ready to proceed?

Mr. DOAK. Yes, sir.

**STATEMENT OF MR. W. N. DOAK, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF RAILROAD TRAINMEN, ROANOKE, VA.—Resumed.**

Mr. DOAK. Mr. Chairman and gentlemen, I believe when we stopped yesterday I was answering some questions. We had, I believe, under consideration a specific question that I had asked some information on concerning a law that was intimated or suggested, I believe by the chairman, in which penalties were inflicted upon the carriers for not handling traffic in case we had a strike. If I could get that information some time in the future I would be very much pleased to get it. I have failed to find anything bearing on that subject.

Senator CUMMINS. Mr. Doak, if I may be permitted a suggestion, I think what the chairman meant was this: There is no law making it criminal for railway people or corporations to fail to operate their railroads; but if a railway fails to render service it becomes liable to those who depend upon the service for any negligence in that respect.

Mr. DOAK. To the extent of damages.

Senator CUMMINS (continuing). And if it unreasonably fails to render service over any great period of time its charter could be revoked by the action of the State which granted the charter. Those are the things that I suppose the chairman had in mind in saying that the railroad company was under obligation to continue to operate its property.

The CHAIRMAN. Yes. I did not say that there were any penalties attached to failure; but what I did say was that the railroads are under obligation to keep the trains in operation; and I think that obligation is both a moral and a legal one.

Mr. DOAK. Possibly I misunderstood the language you used, Mr. Chairman. As I understood, instead of "obligation," you used the word "compelled"; and the explanation is satisfactory.

The CHAIRMAN. I am inclined to think that if the railroads do not operate the trains there will be found, even under existing law, some method of compelling it; but I have not looked into that matter carefully. But it is very clear that it is the duty of the State, and it is the duty of the railroads, to keep the arteries of commerce open, and that is entirely regardless of any contentions between the railroads and their employees.

Mr. DOAK. But at the time we have had these strikes in the past there has not been any penalty inflicted upon the railroads for their failure under those circumstances to handle the traffic more, possibly, than that which would arise through damage suits.

I simply wanted to get that straightened out, and that is entirely satisfactory.

The CHAIRMAN. I understand, Mr. Doak, that the contention of the employees is that the tie-up of the railroads and the prostration of commerce are necessary evils if a contention arises between the railroads and their employees, and that all the community has to do is to stand by and let the railroads and employees conduct their contest in such way as they see fit, provided they do not subject themselves to the penalty of some criminal law for a breach of the peace of the State, or something of that kind. Now, I am contending against that view. I think that the highest duty of the legislators representing the entire public interest is to see to it that that condition of prostration and discomfort and inconvenience and suffering does not ensue upon a dispute between employer and employee. That is my position.

Mr. DOAK. But in the consideration of that question, gentlemen, the entire burden and inconvenience and hardship should not be borne by the employees only. Neither do we believe that a condition should be enforced on freemen in a free country that is bordering on slavery.

The CHAIRMAN. But recollect that if what you contend for is permitted the freemen of whom you speak, 500,000 in number, practically put a hundred millions of people in a condition of slavery.

Mr. DOAK. No; not in a condition of slavery, Mr. Chairman, by any means. It might inconvenience the people greatly; but, we, as the railroad employees, do not assume the responsibility for a condition that possibly would have happened this past year. We gave way to and out of consideration for the public, and we accepted the terms laid down by the highest representative of the hundred million people of this country, and the other people refused to accept. Then why should we be made, by congressional action or otherwise, to suffer by the refusal of some one else to do what was right in the interest of the public?

The CHAIRMAN. I think we want to prevent the suffering to which you refer, and inasmuch as you can not agree among yourselves, we wish to organize some kind of tribunal, as fair and impartial as can be organized, to settle that dispute between you upon the theory that civilized society demands that all controversies between citizens and between citizens and the State should be determined by some tribunal organized by the State for that purpose, in order that law and order may prevail and that force may not be the controlling element in civilized society.

Mr. DOAK. I understand your theory all right, Mr. Chairman; but you will not get the results by compulsory arbitration or compulsory investigation.

Following along the line of the general statement yesterday, which I had not concluded:

After the President's proposition had been submitted to both sides, the employees accepted it. The other parties refused—not straight out, but took advantage of the delay to prepare by every means conceivable, resorting to the press, publishing all kinds of statements and advertisements, trying to inflame the minds of the American people against the employees, until it reached a point where it was apparent that this thing would be continued indefinitely, and then we simply had nothing else to do but to issue an order for a strike. We did so. Then an embargo was placed by the railroads; an embargo was placed on numerous things. They themselves practically called a strike. Then the President of the United States went to Congress and laid before you gentlemen all facts in connection with this controversy.

Now, these facts had been presented to Congress and Congress had seen fit to act, appointing a commission to investigate, a commission to perform a service similar to what is contemplated in this bill; and what was the result? After this law had been passed, after Congress had acted, the carriers disregarded even the action of Congress, and they went out and inaugurated a campaign, and there has never been such a campaign of publicity in the history of this country. They carried it into the national campaign, and the whole attack by the railroads was on the question of an investigation—losing sight of the fact that the law itself had contemplated an investigation of this question and they were not willing to submit to it.

Senator CUMMINS. Mr. Doak, I do not agree with you in the statement that you just made, that the commission authorized by the Adamson bill was substantially like the commission or tribunal that is proposed in this bill. If you have the Adamson bill before you, I think you will find that that parallel is not very accurate.

Mr. DOAK. Senator Cummins, as a matter of fact the distinction is this: As I explained yesterday, the application of the eight-hour proposition is hard to determine until after the thing itself has actually gone into effect. But in the final analysis this commission would investigate this measure after it went into effect, whereas ordinarily under the provisions of this act, in any controversy arising they would go ahead and investigate the circumstances before any action was taken.

Senator CUMMINS. No; there is a greater difference than that. Under the Adamson bill (I am recalling it now simply from memory) the principal thing to be investigated was the expense—how much it would cost the railroad companies in addition to the then existing cost of operation; and second, possibly (although I am not sure about that), the practicability of paying overtime—although I never could see anything in that. Now, this bill proposes an investigation of the merit of the demand, whatever it may be, the merit of the dispute, and a report which would be substantially a judgment between the two parties, as to the question, Is the demand just and reasonable, and ought the railroad companies to yield to it,

or vice versa, as the case may be. There is a great difference between that and the investigation proposed in the Adamson Act.

Mr. DOAK. That would be true, Senator, if it was a question of a dispute over some working condition, or discipline, or something of that kind; but in the investigation of an increase in pay it would be exactly the same, because that is what they would investigate.

Senator CUMMINS. No; to me it would not be the same. Whether a man ought to have \$5 a day instead of \$4 is a very different question from how much it would cost the railroad companies to pay him \$5 a day instead of \$4.

Mr. DOAK. But it must be admitted that in making these investigations the cost is always considered.

Senator CUMMINS. But do you not see the difference between ascertaining the effect of a proposed change and ascertaining the righteousness or the merit of the proposed change?

Mr. DOAK. There might be a difference, as cited by you, and a distinction made between the two; but the point that I was trying to make—I think you misunderstood it—was the willingness of the other party to submit to an investigation. We submitted.

Senator CUMMINS. I agree with you about that. The President of the United States determined this matter, tentatively at any rate, and you were willing to take his decision and the railroads were not. So far I agree with you entirely.

Mr. DOAK. That was along the drift of my argument; it was what I was leading up to, Senator.

It has been stated that the employees were adverse to arbitration for ulterior reasons. I think it is unnecessary to say to you gentlemen that we have submitted in a great many cases. We have reached an agreement to arbitrate in a great number of cases. In one case, as I explained yesterday, the principle involved was one that we considered was not an arbitrable matter.

It has been stated that we are adverse to arbitration. We have some reasons for being adverse to arbitration, and I want to state just briefly our objections to the arbitration, and in doing so I am speaking from our own experience under our arbitration laws.

We have found that where there was an honest intention or purpose on the part of the neutrals or the arbitrators representing the public to grant certain things, when this award was handed down, it was misunderstood or it was turned over—in other words, the carriers interpreted the award—and we could not under the law get any recourse; we could not go to court and get recourse, because it was simply a construction placed upon the award. Mr. Easley a few days ago explained the position that Mr. Low found himself in trying to straighten this matter out in one instance where he had acted as an arbitrator; saying that he thought he understood the language, but that afterwards he found out he did not; consequently it cost the employees in this particular case, in this eastern territory, thousands and thousands of dollars in fighting out the interpretation of the award, and the only way that they could enforce the award and have what they considered a reasonable interpretation placed on that award was just the way in which they fought out every other case, using the strength and force of the organization to accomplish the purpose.

In another instance it was ascertained that one of the arbitrators appointed as a representative of the public by the Board of Mediation and Conciliation was a trustee or administrator for one or more estates in which large sums of money were invested in railroad stocks. He could not possibly have been a neutral or disinterested arbitrator, and that fact was called to the attention, possibly, of the Board of Mediation and Conciliation, with the result that the reply was given that that all the more qualified him to sit on the board. Naturally we would have some reasons to object to the kind of arbitration that we have been recently subjected to.

This has all been brought out and developed before, but we were placed absolutely in the position, through advertisements in newspapers and publicity circulars sent out, that we positively and emphatically refused arbitration; and you can readily see what kind of a position it put us in. We only ask for fair, reasonable consideration at the hands of the public. But if you are to have more publicity by an investigation, and you are to have a board that will hand down decisions like some boards of arbitration, I want to say to you that it is the most dangerous thing to the freedom of the employees that possibly could be enacted—a commission even to investigate, if their report were not absolutely unbiased. That is one of the dangers of these things.

Now, you gentlemen have had before you certain representatives that have come here and argued in behalf of public interest, as representing the public; for instance, one gentleman in particular representing the manufacturers of this country. You have not had, in the aggregate, before you for consideration, as I have observed it, representatives of the consumers to any great extent. We come here now as representatives of approximately 500,000 consumers, who represent, approximately, another million consumers in this country, and register a protest against the passage of any form of compulsory arbitration or investigation act. The gentlemen representing the Federation of Labor no doubt represent millions of consumers; and the consumers, gentlemen, in the final analysis, are the men that pay the bill. They will come before you and register a protest against any form of compulsory investigation or arbitration.

The CHAIRMAN. Why do you not leave out the words "or arbitration" and just characterize it as "compulsory investigation"?

Mr. DOAK. All right; either one. The reason that I wanted to say that is that we are protesting against both; but inasmuch as we have under consideration only the investigation part of it, possibly it would be proper to say only "investigation."

Senator CUMMINS. Are you opposed to investigation if it is not accompanied with some restriction of your rights to strike?

Mr. DOAK. Senator, we generally have plenty of investigation as it is before we ever get to the issue.

Senator CUMMINS. I understand that, but I want to get your view. Are you opposed, in case a dispute arises, to having some tribunal appointed by the Government investigate the dispute and publish the facts in regard to it, as it understands them, provided the law does not restrain you in the meanwhile or at any time from striking?



Mr. DOAK. No; I would not think that we would have any objection to it, if there were no restraint put on us.

Senator CUMMINS. Then you are not opposed to compulsory investigation?

Mr. DOAK. The form of compulsory investigation proposed here, Senator, we are unalterably opposed to.

Senator CUMMINS. The form proposed here is accompanied with a restraint of your action in the meanwhile. I am trying to find out whether you are opposed to the investigation, assuming that it does not contain any provision for restraint.

Mr. DOAK. In all of our dealings, Senator, in handling hundreds of questions over this country (and when I say "this country" I mean here and in Canada as well), at no time have we ever refused to see gentlemen representing the public, business men or otherwise, and lay squarely before them our case.

Senator CUMMINS. Of course you could not refuse. If the Government wants to look into a matter of that kind, no one could refuse; but my query was whether you were of the opinion that that would invade the rights of anybody?

Mr. DOAK. Oh, no; I do not think that kind of investigation would invade the rights of anyone.

The CHAIRMAN. Your objection, then, is not to compulsory investigation by the Government, but your objection is to the restraint in any way, during the period of investigation or for a certain period afterward, of the power of strike?

Mr. DOAK. That is it.

The CHAIRMAN. Does that correctly state your position?

Mr. DOAK. I think that about covers our objection to it.

Now, Mr. Chairman, you know we are investigated now in practically every case that arises by a representative of the Government. The Board of Mediation and Conciliation comes in, and they go into the details in connection with the controversy; and I want to say to you that it is done pretty thoroughly.

Senator POMERENE. But they do not make any recommendations to the public?

Mr. DOAK. No; and here is one trouble. We have gotten results through mediation that we would not possibly have gotten had their actions been made public. It is handed out and is misconstrued, misunderstood, and misquoted, and the public does not get the exact facts in the final analysis.

Senator POMERENE. That is true of every dispute; so that it is not unlike any controversy that may arise on any subject. Every Senator is misrepresented and has his views distorted and is made to say many things that he did not say, and to stand for many things that he never thought of; and that is one of the penalties we have got to pay in this country. I take it that is true with all organizations.

Mr. DOAK. That is true, Senator; and I want to say to you candidly and frankly that I do not believe, had these negotiations, this entire matter surrounding this eight-hour controversy, been kept a secret, that there would have been any such agitation; and, furthermore, I believe that had this matter been handled without the publicity and the misquoted and misinformed publicity given it, we could have reached a settlement and this question would have been decided. But the railroads went out and spent millions of dollars—I make the

statement because it must have cost that—in putting out advertisements, and the brotherhoods are guilty as well of putting out advertisements. I believe that if you would stop the entire publicity in connection with these questions, and not unduly alarm the American people, you would get better results than you have obtained by the kind of publicity that has been given these questions.

The CHAIRMAN. There seems to be no doubt, Mr. Doak, but that the quiet and nonpublic manner in which mediation and conciliation are performed has probably tended to an adjustment of difficulties.

Mr. DOAK. It is absolutely true.

The CHAIRMAN. But we are now referring to a condition where mediation and conciliation have failed, and where a strike is impending. It is a positive danger, and the entire business of the country is threatened. How could you suggest any method under those conditions that would avoid publicity?

Mr. DOAK. I have none to suggest at all; but I say that the results of the past by secret mediation have been so great, and have in almost every instance been fruitful of good results, and when we had one real live campaign of publicity in the country we utterly failed to get effective settlement. That is the difference between the two.

Senator POMERENE. You certainly would not conclude from that statement that because there was one case in which there was publicity and there was not a settlement, that therefore the failure to get a settlement was due to the fact of publicity?

Mr. DOAK. I think that a great deal of the influence that tended to keep a settlement down. Senator, was the enormous publicity and misstatement of facts in connection with it. It had the entire people inflamed. Business interests were flocking to the railroads and telling them to stand up and fight, and all those things. It got to such a point that we could not effect a settlement.

The CHAIRMAN. Don't you think that this had some effect upon the peaceful adjustment of these disputes—the fact, first, that this change would involve an immediate additional cost in operation to the railroads of a sum alleged to be somewhere between fifty and eighty millions of dollars?

Mr. DOAK. They said a hundred.

The CHAIRMAN. A hundred million dollars; and that the railroads felt that any increase which they might agree to with the employees might not be recognized by the Interstate Commerce Commission as a factor in the determination of rates, and that therefore they felt that it was necessary that the public should be represented in the determination of these increased operating expenses, so that the rates, if necessary, could be correspondingly increased so as to meet the increased operating expenses?

Mr. DOAK. No, sir; I do not thoroughly agree with you.

The CHAIRMAN. I do not state that as my view; I am simply asking you about it.

Mr. DOAK. I want to say this, that that was not the trouble at all. They were practically guaranteed, as you know to be a fact, that they would be granted—or it was reasonable to suppose that they would be granted—an exact amount equal to the expenditure brought about by the application of this eight-hour day. But that was not it. They wanted to take their own figures and go before

the commission and say what it cost, instead of the actual facts. That is where the trouble came in.

The CHAIRMAN. You say that is practically guaranteed. By whom?

Mr. DOAK. It was assured to them by the President of the United States that he would use the power of his office to see that no obstacle of law stood in the way of getting the increase in rates.

The CHAIRMAN. Yes; but you realize that the Interstate Commerce Commission might have its own views?

Mr. DOAK. That is quite true.

The CHAIRMAN. And you also realize, do you not, that there have been intimations by the Interstate Commerce Commission that they would not recognize as binding the voluntary action of the railroads and their employees regarding increases; that they themselves would determine whether or not these increases were reasonable and necessary—

Mr. DOAK (interposing). No; I do not know of any such intimation.

The CHAIRMAN (continuing). If the plain effect thereof was the putting of an increased burden upon the public? Are you not aware that there have been intimations of that kind in the decisions of the Interstate Commerce Commission?

Mr. DOAK. May I ask you to repeat that? I did not exactly catch it.

The CHAIRMAN. Will the reporter read the question?

(The reporter read the question, as follows:)

And you also realize, do you not, that there have been intimations by the Interstate Commerce Commission that they would not recognize as binding the voluntary action of the railroads and their employees regarding increases; that they themselves would determine whether or not these increases were reasonable and necessary, if the plain effect thereof was the putting of an increased burden upon the public?

Mr. DOAK. No; I do not know of such intimations as that. I thought the Interstate Commerce Commission was a commission which absolutely judged those cases on the merits when they were presented. I did not know that there were advance intimations given out, or anything of that kind.

The CHAIRMAN. But I mean in decisions, where these questions of increased operating expenses came up before the commission as a reason for an increase of rates. The question was therefore directly before them, and I understand, though I can not quote the decisions, that the commission indicated clearly that these agreements between employer and employees regarding increase of wages, which would increase the operating expenses of the company and in that way perhaps diminish the returns, would not be regarded as binding upon the commission; that the commission itself would inquire into the reasonableness of those increases.

Mr. DOAK. I do not know that such statements have been made by the Interstate Commerce Commission. As I said before, I presumed that each case was judged on its merits.

In this connection it might be well to say this for your information: We do not know what it would cost to apply the eight-hour day. It is a conjectural proposition. The railroads say it would cost \$100,000,000. We were informed by the President that neither

one of us knew what we were talking about; that nobody knew, until it was tried, what it would cost. I suppose that you are aware of the fact that there was an increase in revenues of the railroads this past year approximating \$1,000,000 in excess of the year before.

Senator CUMMINS. How much?

Mr. DOAK. A billion, I mean; a billion dollars.

The CHAIRMAN. What did you say? I did not quite hear that.

Mr. DOAK. That there was an increase in the revenues of the railroads approximating a billion dollars this past year, as compared with the year before.

The CHAIRMAN. I think you are mistaken in that.

Senator CUMMINS. Not quite so much as that. It is a very large sum.

Mr. DOAK. It is a very large sum, at least.

The CHAIRMAN. Yes.

Mr. DOAK. And practically all classes of employees of the railroads were granted an increase in pay, but the men asking for the eight-hour day were not granted anything.

The CHAIRMAN. Was not that due largely to the fact that the men engaged in the operation of trains had been steadily pressing their claims for lesser hours and increased pay and had gained some adjustment in that direction, while the other unorganized employees had not been favored with similar advances?

Mr. DOAK. The way you put it I do not know whether I could answer you yes or no. But here is the situation: Every time, as a general proposition, that the organized employees move and get increases in pay they grant the other people increases in pay to keep them from organizing—to keep them satisfied; but in this instance, perhaps for many reasons, when we came in and asked for this they said we were not entitled to such an enormous increase in pay. But they told us, it has been said and repeatedly said by the managers, that if we had asked for an increase in pay we would have gotten it. And in order to carry that out, of course, they granted increases in pay to the others.

But the reason that I mentioned this fact was to show that had the increase amounted to an average of what was contended between the managers and the employees that it would cost, or the maximum amount contended by the carriers themselves, under the increased earnings of the railroads in this country they could have paid it without going to the public and asking them to grant an increase of 1 cent in rates.

It has been intimated, or suggested, that from the overzealousness, possibly, of labor leaders that we made unreasonable demands and took an arbitrary position. This is impossible in these four railroad brotherhoods of which I am speaking. We have absolutely home rule. Every big wage question that has been submitted in years to the employees has first gone to the referendum vote of the membership to approve or disapprove its presentation to the managers. Before any action can be taken calling a strike it requires more than a two-thirds vote of the employees to do so, and you can not act except through the advice and consent and under the instructions of the employees in the final analysis.

The CHAIRMAN. Right on that point, Mr. Doak, may I ask you one question? How is your strike vote taken? Is it a ballot vote,

or do the officials of the organization simply take orally the votes of the employees and note them?

Mr. DOAK. It is more secret than the Australian ballot.

The CHAIRMAN. But is it by a ballot?

Mr. DOAK. Yes, sir. I would be very much pleased to tell you about it.

The CHAIRMAN. Yes; we would like to know.

Mr. DOAK. A ballot, when it is prepared, states the facts, generally publishes all correspondence and all points in connection with what has been offered, and all facts in connection with a controversy. This is all submitted in a ballot. It is given to each individual employee in an envelope. He takes it out, reads the ballot, signs, detaches his vote, puts it in an envelope, seals it up, and delivers it back to the man that presented it to him. And the officers never take any of the ballots; they never vote anybody.

Senator POMERENE. How do you mean? Does each voter sign his name?

Mr. DOAK. Each voter signs his name and seals the ballot up.

Senator ROBINSON. Who generally presents it to the voter? How is he reached?

Mr. DOAK. One of the local committeemen.

Senator ROBINSON. Does he discuss the matter with the voter? Is he permitted to do that, or appointed to do that?

Mr. DOAK. He is specifically instructed not to use his influence at all and to only answer any questions asked for information.

Senator ROBINSON. Is the system adopted for the purpose of obtaining the uninfluenced vote of the worker?

Mr. DOAK. Absolutely.

Senator ROBINSON. Have you studied it and investigated it to determine how it works in practice? Have you exercised the right to vote yourself in the past?

Mr. DOAK. Many a time.

Senator ROBINSON. Are the questions that are submitted usually the result of widespread agitation in the organizations, or what is the usual case regarding them?

Mr. DOAK. Senator, now I can explain to you. I will go back a little bit further. Before a wage movement is inaugurated it generally—in some of the organizations at least—requires the approval of the convention. Now, the convention is made up of men elected, representing each division or lodge of the organization, and is the supreme body of the organization. They meet, and then, possibly, the associations meet and form a plan, and it goes back on a secret referendum ballot to the membership for their approval before it can be presented to the railroads; and after they have voted and approved it by a two-thirds majority, then it is presented. If they do not approve it, or if on any individual railroad the men do not approve it in any individual class, it is not presented.

Senator ROBINSON. Who determines the result of the referendum or the ballot?

Mr. DOAK. Who canvasses the ballot?

Senator ROBINSON. Yes.

Mr. DOAK. It is canvassed by the committee, in the presence of the officers.

Senator ROBINSON. Can you state about how many questions have been referred since you have been active in the organization? Do you know how many referendums have been had?

Mr. DOAK. No; I do not know; but there have been hundreds of those strike votes taken over the country.

Senator ROBINSON. I mean in the organization you belong to.

Mr. DOAK. Well, there have been hundreds of them taken in our organization but very few of them ever used. We reached a settlement after we took a strike vote.

The CHAIRMAN. Is not that one difficulty about the situation, that the employees, in the hope of gaining an increase, would adopt a strike vote in the hope that it would be used as a means by their representatives of securing what they wish, whereas they might finally conclude not to strike, if the matter were resubmitted to them, after an absolute failure to secure what they wanted?

Mr. DOAK. Now, Senator, I know that question has been asked, and I know the public has been deceived on it, and I am not surprised that you gentlemen have gotten, possibly, the wrong impression.

The CHAIRMAN. I have no views regarding it. I am simply asking for information.

Mr. DOAK. There has never been a vote submitted to the men without the positive declaration contained therein that it will be used unless a settlement is effected, and the further specific language, "If you do not mean to strike, do not vote to strike." It is to our advantage to know, decidedly to our advantage to know, and we are particularly and peculiarly anxious to know whether or not the men will go out on strike if we call a strike, and for that reason we want to know whether or not they are willing to strike.

Senator ROBINSON. Now, I want to ask one or two other questions following those I asked a while ago, when I was prevented from completing the examination I had in mind. I asked you about how many strike votes had been taken since you had been active in the organization, and you said perhaps hundreds. Now, I want to know whether those votes usually represent an overwhelming majority in favor of or against the proposition or are those votes usually, or frequently, pretty well divided?

Mr. DOAK. Well, in my personal observation I have seen this. I am speaking now for my organization. I have seen votes as low as 95 per cent and as high as 99.7 per cent.

Senator ROBINSON. You mean 95 per cent against a proposition?

Mr. DOAK. No; in favor of a proposition; and as high as 99.7 per cent—so close to the 100 per cent that you could hardly figure it.

Senator ROBINSON. You mean the usual vote is at least 95 per cent in favor of the proposition?

Mr. DOAK. In our organization; yes.

Senator ROBINSON. Is that so?

Mr. DOAK. Yes, sir. In this last movement—I think our vote in this last movement was something like 95 per cent in the entire United States.

Senator ROBINSON. That is my recollection of it. That is all I wanted to ask you about.

Mr. DOAK. Just following that just a little further, I have seen all the men on one particular division or end of a railroad, every

man vote for a strike, and we go out and take the nonorder men—the men who are not members of the organization—the same as we vote our own men or members in those cases.

Senator ROBINSON. How do you vote them, in the same way that you vote your members?

Mr. DOAK. Just exactly the same.

The CHAIRMAN. Why do you vote them?

Mr. DOAK. They are employees, and we submit it honestly to the employees entirely. You understand we do not run a closed-shop policy in these organizations.

Senator ROBINSON. Those nonunion employees have the same interest in the controversy that the union employees have.

Mr. DOAK. Sure; in that class of service; and we always vote them on a question of strike.

The CHAIRMAN. Now, do you vote just all the employees of a railway system?

Mr. DOAK. The employees in the classes affected engaged in this particular class of service.

Senator POMERENE. Whether union or nonunion men?

Mr. DOAK. Whether union or nonunion men. And it might be interesting to know that our experience in the past has been that the nonunion men almost always vote solidly in favor of sustaining the organization.

The CHAIRMAN. Take the Brotherhood of Engineers. Are there any engineers employed on that railroads that are not members of the brotherhood?

Mr. DOAK. Oh, a few.

The CHAIRMAN. Well, take the firemen. Are there any of the firemen?

Mr. DOAK. Sure; there are a few of them.

The CHAIRMAN. A few of them?

Mr. DOAK. And where we have the colored firemen, of course they do not belong to the organization. The same thing is true with the brakemen and the conductors. Some of them do not belong.

The CHAIRMAN. Then, when you say you take the vote of the nonunion men, you mean simply the nonunion men engaged in the same occupation exactly as the striking operatives?

Mr. DOAK. Sure. We would not go out and vote the clerks or the trackmen on a controversy we had, and where they were organized they would not vote us.

The CHAIRMAN. Now, about the manner of the voting, you say that these committeemen deliver to the employees the entire review of the case by the chiefs of the brotherhoods. Now, you at the same time tender them a blank form instructing for or against the strike?

Mr. DOAK. It is all printed. The review of the case is printed, and on the bottom of it there is a ballot provided, with a perforated space in there where the man signs, and he signs this declaration—usually this is the language: "I have read the foregoing statement or ballot, and hereby cast my vote for or against a strike."

The CHAIRMAN. Now, then, that is put into a sealed envelop, you say?

Mr. DOAK. And he tears this off generally, and keeps the ballot for his information; tears this strike ballot off, or sometimes they seal the entire matter up in this envelope. The other fellow don't

know how he votes. He seals it up in the envelope and hands it back to him.

The CHAIRMAN. Seals it up in the same envelope in which he received it?

Mr. DOAK. Senator, we have an envelope, and we just take and put a ballot in an envelope, and take and hand the envelope to the fellow. He takes the ballot out, reads it, signs it, and either puts the whole ballot, or detaches this from, and puts it in the envelope, and himself seals it up and hands it back to the man. We generally do not know anything about how they vote.

The CHAIRMAN. It is not put in a ballot box?

Mr. DOAK. No, sir; it is not put in a ballot box. You could not do that.

The CHAIRMAN. You say the other man does not know how the man is voting?

Mr. DOAK. No, sir.

The CHAIRMAN. But after the envelope is opened, would there be any indication then as to how he cast that particular vote?

Mr. DOAK. Absolutely. He signs his name to it. We would have no way of checking it, if they did not. I will be very glad to furnish you a copy of a ballot.

The CHAIRMAN. I would be glad to have it.

Senator ROBINSON. I think I understand your system now, as far as I am concerned, largely. I am interested to know whether there have been any complaints against the practices prevailing in taking these votes.

Mr. DOAK. Any complaints? How do you mean?

Senator ROBINSON. From the workmen against the practices of the committeemen, or others, in taking the votes?

Mr. DOAK. In the men themselves?

Senator ROBINSON. You can readily see what I have in mind. Suppose the committeeman is very strongly biased in favor of the question perhaps that is being submitted, as most men are when acute controversies arise. He could easily influence the voter, if he chose to do so. I am interested to know whether that actually happens or not, or whether the practice is for the committeeman to appear neutral.

Mr. DOAK. If that happens, we do not know anything about it.

Senator ROBINSON. You have not had any complaints about it; that is, from the workmen?

Mr. DOAK. No, sir; and if we did we would prefer charges against that man and expel him from our organization for using his influence.

Senator ROBINSON. If he undertook to intimidate a workman, the workman, at least in some instances, would report it, would he not?

Mr. DOAK. It would be reported, and he would not only lose his position on the committee, but his membership in the organization.

Senator ROBINSON. Have there ever been any cases that you know of where the committeeman was reported or complained of for improper conduct in trying to influence and intimidate a voter?

Mr. DOAK. No, sir; I do not know of any.

Senator ROBINSON. Have you in your organization what is known as a walking delegate?

Mr. DOAK. Now, I do not know what you are talking about.



Senator ROBINSON. Well, don't you know what a walking delegate is?

Mr. WILLS. I am one.

Mr. DOAK. Now, Senator, I do not know exactly how you are going to fix it.

Senator ROBINSON. I am not going to fix it. The term is quite a common one, which no doubt you have heard used. I have heard it used, and I want to know whether you had officers corresponding with your legislative representatives, Mr. Wills.

Mr. WILLS. No.

Senator ROBINSON. Why did you style yourself one?

Mr. WILLS. As I understand it, that is a term used for any officer of any organization. That is one walking delegate. Any man who gets a salary and who is a representative of an organization is one. I have been called a walking delegate many, many times in a joking way, but I never took offense at it, because I never thought it was intended to offend. I knew it was, because I was a paid officer of a labor organization. But that is the accepted meaning of the term.

Senator ROBINSON. Does it apply to all officers of labor organizations?

Mr. WILLS. Why, in a general way. I know it used to be considered very obnoxious, because in some organizations walking delegates were found to be men that exacted a salary from the employers as well as the employees, and it became somewhat obnoxious.

Senator ROBINSON. Have you found anything of that kind among your officers or so-called delegates?

Mr. WILLS. I never have.

Senator ROBINSON. Never have found a case of that kind?

Mr. WILLS. Never have; never have found a complaint against this system of voting. The arrangement is made by our convention as to how this vote shall be taken in the various organizations, and so far as my knowledge goes, and it dates back not beyond the memory of man, but a good many years—I never have heard a complaint come to our attention as to the manner of voting, and the general thing is this, that the man who takes the vote—the local officer—who is to some extent responsible to the membership for his action, generally is the man that advises the men, if any way at all, to be careful how they vote, and not to get themselves into serious trouble by voting in favor of a strike.

Senator ROBINSON. Is not the committeeman usually what is sometimes called an agitator?

Mr. WILLS. I think quite the reverse.

Senator ROBINSON. When talking about walking delegates a while ago, in the olden days, some years ago, the term "walking delegate" was used to characterize what might be called in part a professional agitator, or a man who made his living by agitating the workmen?

Mr. WILLS. And exacted wages from the employer as well as the employee.

Senator ROBINSON. Now, you are not a walking delegate in that sense, are you?

Mr. WILLS. I hope not.

Senator ROBINSON. Why did you answer a while ago, when that is the generally accepted meaning of the term "walking delegate," that you were one?

Mr. WILLS. Because I have been called one many, many times.

Senator ROBINSON. I am asking now about the substance of things. As a matter of fact, you were not a walking delegate, and never were one?

Mr. WILLS. Not in that sense.

Senator ROBINSON. There has been in some labor organizations a class of officers who were professional agitators who were obnoxious to the best interests of the organization, has there not?

Mr. WILLS. We believe that is true.

Senator ROBINSON. And the organization calls them walking delegates sometimes, does it not?

Mr. WILLS. I never heard of the organization calling them that.

Senator ROBINSON. What does the organization call them, or did they have a particular name for them?

Mr. WILLS. Agents, I believe; they are the agents.

Senator ROBINSON. That is all.

Mr. DOAK. Senator, I hope that you can see why I did not want to answer your question until I understood what you meant. I know it is true that in a great many instances these charges have been made, but it is impossible in our organization.

Senator ROBINSON. What charges do you now refer to?

Mr. DOAK. The charges that men took money from both sides. In other words, the term "walking delegate" has been used to a great extent for a fellow who could go out and had absolute authority and could call a strike at any time he wanted to, without consulting the men or anything else. We have no such system as that.

Senator ROBINSON. It is part of the system that I am inquiring about. You have not that system in your organization?

Mr. DOAK. Absolutely no. The men themselves must determine that; they must initiate the first move.

Now, there has been considerable said about the industrial-disputes act in Canada, and I understand that certain language contained in Senator Newlands's bill is the same as that contained in the Canadian industrial-disputes act. You have heard gentlemen come here before this committee and say how satisfactory it was in Canada.

Senator CUMMINS. Only one, and he did not know anything about it.

Mr. DOAK. Just what I was going to prove—that he did not know anything about it. It is unsatisfactory in Canada; it never was satisfactory; and we are the people that have submitted to it more than anyone else—our organization. You heard the gentleman come here and tell of the serene peace in Australia under their law and about the strikes that he was confronted with when he reached British Columbia, and then came down to Butte, Mont., and got into another. That gentleman did not tell you that the Australian act did not apply to the railroad employees. Neither did he tell you that the strikes that confronted him in British Columbia and in the United States were not railroad strikes. Consequently there is nothing to that.

Now I am going to give you a concrete case of where both our law and the Canadian disputes act were applied at one and the same time, with the results. In 1910 the conductors and trainmen in the eastern territory on all lines east of Chicago and Port William and

north of the Chesapeake & Ohio lines presented a request for an increase in pay and certain changes and modifications of working conditions. The roads in the United States, through mediation and an agreement to arbitrate, settled their disputes, while under the Le Mieux Act in Canada an investigation was being held on the Grand Trunk Railroad. They investigated for a period of 90 days, and then the company refused to put in the award, and the men struck. You heard the gentleman say that the law was violated and no penalty had been inflicted for the violation of the law. And while, under the old Erdman Act, which has been followed by the Newlands Act since that time, we were able to settle all these disputes on all these great lines of railroads in the United States, under the investigation act in Canada they were getting ready for a strike, and in violation of the law, the Canadian disputes act, and while the law prohibited an importation of men into Canada in the case of labor trouble, they did both. The men got their increase in pay in the United States, and we had peace. In Canada we had a most disastrous strike and one of far-reaching effect. There is a concrete case; the same presentation; the same, absolutely the same, conditions; and you see the result. The gentleman evidently, when he characterized this country with Australia, saying Australia reminded him of civilization and this country of savagery, had overlooked that case. You heard him again say that he is in favor of compulsory arbitration. He is the only man that has advanced the statement. Why? Does he know what it means? No doubt you have heard a great deal said that there are certain countries that have compulsory arbitration. I say there is one that has compulsory arbitration—Norway—but the compulsory arbitration act is not compulsory, after all. If the King sees fit he can make them arbitrate. But that law only remains in effect during the period of the European war. It is an emergency act to take care of conditions arising as the result of that war.

Senator POMERENE. Will you, for my information, state, if you can, how many of these threatened difficulties between the railroads and the employees in Canada have been investigated and resulted in a settlement?

Mr. DOAK. I do not know of any in particular. I am not so thoroughly familiar with that phase of it.

Senator POMERENE. Where can we get some reliable information on that subject?

Mr. DOAK. Mr. Easeley gave you in his statement the other day, I think, a review covering the entire matter in Canada.

Senator ROBINSON. That is also contained in the article or study which has been exhibited to the members here by the Board of Mediation and Conciliation. All of that information is in there.

Senator CUMMINS. There is the report under the Canadian law. I ask that it go into the record. It shows everything that had been done.

Mr. DOAK. You can get it there, I think.

Senator POMERENE. I will get it. Thank you very much.

Mr. DOAK. I requested the information from one of our officers in Canada, but I have not received it yet.

Senator POMERENE. Judge Chambers submitted a compendium of the laws of the different countries upon this subject. I do not know whether it included the report.

Mr. DOAK. I think it includes the report.

Senator ROBINSON. It is contained in the voluminous document which was presented here by Judge Chambers, called "Strikes and lockouts," etc.

Mr. DOAK. Sir W. L. McKenzie King, at the time he was minister of labor of Canada, or just after that, in an address before the railway business association in 1912, quoted some things in reference to the act, by a comparison of our laws and theirs. Now, up to that time he said there had been 132 applications made, and that they had 15 strikes. We had not had any to amount to anything under the Erdman Act then in effect. He calls particular attention to the fact, while he says they believe it is satisfactory, that organized labor has protested against the period of investigation, and there is an amendment pending providing for a reduction to 30 days, instead of 90. In his statement there he calls attention to the fact that we have apparently had more satisfactory results under our laws than they have under theirs. That was under the old Erdman Act, before the Newlands Act became effective. The Canadians that I have talked with do not like this act. They say it is not satisfactory, and results have not been obtained under it.

Senator POMERENE. Whom do you mean by that? Do you mean the public, that you have talked with the public generally, or with the railroad employees?

Mr. DOAK. I have talked with the railroad employees over the result obtained under the law. They have not obtained any results, satisfactory results, under the law.

Senator ROBINSON. Do you know the estimation in which the act is held by the general public in Canada, Mr. Doak, or have you investigated that, or made any inquiry?

Mr. DOAK. Why, I do not know, but I imagine anything, Senator, that would prevent a strike now and then, that would effect a settlement, would be better than nothing, in their opinion.

Senator ROBINSON. How do the railroad officials generally regard it, or have you studied that, the representatives of the railroads?

Mr. DOAK. I do not know exactly what they would say about it, but I know what they have done. They have ignored it when they wanted to. The Grand Trunk case, for instance, is one where they did, even despite the fact, Senator—now, to show you, over on our side maybe a part of those roads run right over into the United States. They do. That road, for instance, or a part of it, runs into the United States. When a board over here had awarded those privileges, and had settled the matter, and a board over there had made the investigation, then the railroad refused to abide by the investigation, and let the men go to strike. So you can readily see that they do not care anything about it. They treat it as a joke, and there is a strong argument, in my opinion, against investigation, because it did not have any effect. The result obtained over the law over here even did not have any effect. The settlement here, coupled with the report of the investigating committee, did not have the effect, nor did it even, under the apparent provision, strict provision against lockouts, and so on, on the Grand Trunk Railroad. But the laws of Canada did not have the effect to defeat the purpose of the men. In that case they continued and they did exactly what we said here yesterday that this law would do, give the corporations the opportunity

to prepare and to defeat the men, and it was absolutely turning us over to the railroads.

Now, I just want to say a few words, but first I want to officially register a word of protest on the part of these four organizations against this proposed compulsory investigation law.

Next, I want to take up just briefly Senator Underwood's proposition, which provides—

Senator POMERENE. Before you go into that, I want to ask you two or three questions, to get your view of the matter.

Mr. DOAK. All right.

Senator POMERENE. You have referred to the Canadian law, and given us one instance in which the investigation failed to settle the strike. You have referred to the Newlands law, and we all have one instance in which it failed to settle a strike, and I believe it will be conceded that except for what the President did in the matter, and Congress did, there would have been a strike; is that your judgment?

Mr. DOAK. As to the strike, this eight-hour movement?

Senator POMERENE. Yes; if it had not been for what the President did, and what Congress did, there would have been a strike?

Mr. DOAK. Yes, sir; but I will explain to you. I think I have gone over this, Senator, before. I drew only a comparison between the results obtained under the laws in the United States and those in Canada. I have here before me, as I said, this report, which was in 1912, of where there had been 132 cases, and they had had 15 strikes. I qualified my remarks, in the first instance, by stating that under the Newlands Act there had been 74 or 75 cases, and a settlement on each one but two.

Senator POMERENE. If you have gone into that, I do not care to address myself to that any further. I have another matter in mind. Now, you, of course, know that all of us would have very greatly regretted the fact of a strike, and particularly if that strike had continued for, let us say, 60 days, and thereby paralyzed our commerce. Now, you agree with me in this, that that ought to be avoided, if possible, do you not?

Mr. DOAK. Yes; but still I deny on the part of the employees any responsibility in connection with that.

Senator POMERENE. I am not attaching responsibility to either side, so far as that is concerned. It may be that one side or the other is to blame, or both sides to blame. But, now, looking at it from the standpoint of the Congress and the Government of the United States, do you not feel that they ought to do something to avoid as nearly as may be a strike which might paralyze the industries of this country for a period of 60 days?

Mr. DOAK. If it was possible to do that.

Senator POMERENE. Well, very well; that answers that. Now, let me go—

Mr. DOAK. Now, just wait a minute, Senator. I want to say something in connection with that. I do not want to get you in wrong.

Senator POMERENE. If you will pardon me, let me ask you another question or two, and then you may go ahead and make any explanation that you wish. I want your views. I am interested in this matter, and I propose to do what my judgment tells me is my duty in the matter, after we get through and get all the light we can.

Mr. DOAK. I appreciate that.

Senator POMERENE. Now, we must act upon the theory that when the men are right they are usually going to succeed, and if they are right the court of public opinion is going to sustain them. That is true as a general proposition, is it not?

Mr. DOAK. Senator, how are we going to succeed?

Senator POMERENE. If you will allow me to follow my line of inquiry here just a minute more. I want you to fairly state your views, so that we can get at the situation. Now, assuming, for the sake of argument, that the men are right, they are acting on that theory, otherwise they would not strike; now if there is an investigation by an impartial tribunal, and we must go on the theory that any tribunal that is appointed will act impartially—there may be exceptions to that, it is true—but if they make their report that the employees were about to strike at a given time; that their claim is the following; that under their judgment their claim was well sustained; now do you not think that a report of that kind would break the backs of the railroads and you would get your settlement and get your claims?

Mr. DOAK. It has not done it.

Senator POMERENE. And avoid the tying up of commerce for the matter of 60 days?

Mr. DOAK. No, sir.

Senator POMERENE. I would like to hear your views on the matter and the reason why.

Mr. DOAK. I am going to tell you why. It is a matter of impossibility for the railroad employees to get their side before the public in the same light that the other parties get their side before the public. Our experience has absolutely demonstrated that fact, and regardless of any investigation, regardless of the fact that Congress has said, even the greatest legislative body on earth has said, to the American people that the railroad men were right in asking for an eight-hour day, has it been accepted? No. To the contrary, the employers of labor joined hands with the railroads in condemning and criticizing Congress, and in criticizing the brotherhoods and their leaders and everybody that had anything to do with it. You have not got the results under an investigation.

Senator POMERENE. But I, for one, believe in the eight-hour law.

Mr. DOAK. We do.

Senator POMERENE. And I deny your statement when you suggest even that the employers are the public. They are only a small part of the public.

Mr. DOAK. But, Senator, I want to say to you that it is impossible for us to get it before the people, before the public, in a broad light.

Senator POMERENE. That, if I understand it correctly, is one of the objects of this bill, that you will have an impartial tribunal that will investigate the matter. Now, let us confine ourselves for the moment to the case that I presented. You have this impartial tribunal that is investigating, and I will assume that their finding is going to be in favor of the railroad men. Now, if it is in favor of the railroad men, and that publicity is given to it, the public is going to attach more importance to what that tribunal will say than to everything that can be said by either side in the controversy.

Mr. DOAK. That may be true; but, still, how are you going to get it to the public; how get it to the public? That is the question.

Senator POMERENE. I dare say that if a tribunal would report the result of its investigation and that report showed that the employees were right, I know of 400,000 men that would be eager to get that to the public. I know that every newspaper in the country would get it to the public. There would not be very much of a question about it; and if there was any difficulty about it, I have confidence in the ability of the 400,000 men in the brotherhoods to get that before the public in a pretty forceful way.

Mr. DOAK. We did get it before the public last fall, when the railroads, when the newspapers—now, you can talk, if you want to, Senator. Here was the experience that we had with the newspapers. They refused to print our side of the story.

Senator POMERENE. I think there is very great force in that part of your statement, but we are speaking now of the report which will be made by this tribunal.

Senator ROBINSON. As a matter of fact, fourteen or fifteen thousand of them were used as advertising mediums to present the other side.

Senator POMERENE. Which do you mean?

Senator ROBINSON. The newspapers.

Senator POMERENE. Yes; that is true.

Mr. DOAK. Yes; there was one advertisement run in four issues in every daily and weekly paper in the United States that it could possibly be gotten in.

Senator CUMMINS. What occurs to me is this at that point: That theory of public opinion is that it will compel one side or the other to do what is right, and if public opinion is on the side of the men, that the railroads will accept their terms and make an agreement with them. We had an arbitration on here last August. The highest arbitrator in the land, a man in whom more people have confidence than any other man in the country, said what the railroads ought to do. They did not accept that suggestion or finding and they did not grant the men the privileges that he said they ought to have granted, and the men are not getting the hours or the pay that they believe they ought to get.

Mr. DOAK. That is correctly stated.

Senator CUMMINS. I have a great deal of skepticism about the force of public opinion.

Mr. DOAK. Now, here was our experience and that of the Government in dealing with the railroads, and the force of public opinion on the one side versus the other. You know, and every Member and every citizen of this country knows, that, regardless of what the public thought, it is "The public be damned!" until Congress acted, and said they must quit rebating and discriminating, and passed the commerce law, and I want to say to you that the same thing will happen here. If they see fit to do it, they will do it, and if we are denied the force to make them do it you have absolutely ruined the effect of these organizations and taken away the liberty of these men to force upon these corporations justice. That fact can not be denied. Now, are you through, Senator? Do you want to ask me some more questions?

Senator POMERENE. Now, assume for the sake of argument, that there would have been a strike, say a 60-day strike. Of course we all realize what the effect would be on the public, particularly in the

centers of population. Now, what suggestion have you to make to avoid that condition?

Mr. DOAK. I have none to suggest at this time.

Senator POMERENE. It is not the rich man's question. It is every man's question.

Mr. DOAK. I know, but——

Senator POMERENE. If a strike was to take place here, say for 60 days, involving all of the great transportation lines, why, of course, we all realize that in large centers of population, like New York and Boston and Philadelphia, there would be almost starvation. Now, I do not want that, and neither do you want that, and I think we would all join hands to avoid that, if we could find a remedy to avoid it.

Mr. DOAK. We joined hands last fall and tried to avoid it.

Senator POMERENE. I think that you did.

Mr. DOAK. And we gave away 50 per cent of our demands in behalf of the public interests.

Senator POMERENE. I think the men showed a very magnanimous spirit in that matter. I felt so and I feel so now.

Mr. DOAK. But we did not get the results, and that is the reason for my denying any responsibility.

Senator POMERENE. You say you did not get the results, but you may be getting them yet. You do not know.

Mr. DOAK. We did not get them as we intended to get them, is what I mean. We did them.

Senator POMERENE. Of course you accepted it?

Mr. DOAK. We did at that time. You must realize and all of us must realize that there was somebody in this country that effected a settlement; temporarily, at least. There was somebody. And I will say to you gentlemen that the Congress of the United States found a way out of it for the emergency, and you can find a way out for any other emergency without enslaving——

Senator POMERENE. Let us have hope in what the Supreme Court is going to do.

Mr. DOAK. Let us hope for it.

Senator CUMMINS. You say that Congress found a way out of it. How long a way out of it?

Mr. DOAK. I said temporarily, Senator. I qualified that. Now, I was going to Senator Underwood's proposition, to empower the Interstate Commerce Commission to fix the rates of pay and the hours of service of the employees. My objections and our objections to this are that that is absolute slavery, and it discriminates. We have been asked how about the other 100,000 or 1,000,000 employees on the railroads. We have been asked these very questions—why they are not considered. The same thing here. Why is it that the unorganized class of employees, why is it that the officers of these railroads, why is it that the attorneys for these railroads, why is it that the newspaper men representing the railroads, and all, do not come under the same provision? Why is it we are designated as a class because we are organized, and they want to put us under the ban of the Interstate Commerce Commission, in the interest of the public?

I fail to understand why it is necessary, unless it is a frank, straightforward attempt on the part of those favoring this proposi-



tion to turn us over to the Interstate Commerce Commission or to some tribunal and to destroy the effect of these railroad labor organizations. There can be no other conclusion reached. It will turn us over and deprive us of our right to live. It would say, "Invest in the Interstate Commerce Commission the absolute authority to say what kind of a house we should live in, how we should educate our children, how we should feed our families"; and if this principle was submitted to in this instance, it would go further, or could go further, just as reasonably and consistently as this does, and say this, in behalf of the public interest, that "If you go to church, you go to the Catholic Church or to some branch of the Protestant church." It takes away from you the liberties and the rights guaranteed as free-men and enslaves 500,000 or more employees and another million or more of the citizens of this Commonwealth, and you will have a worse condition of servitude than the Negroes had prior to the Civil War.

The CHAIRMAN. Mr. Doak, did you understand that the Underwood bill provides only for the laborer that is employed only in the operation of trains?

Mr. DOAK. I think so.

The CHAIRMAN. I understand Mr. Underwood disclaimed that, and said it applied to all officers and all employees.

Senator CUMMINS. I think you are wrong about that.

Mr. DOAK. The bill does not say so.

The CHAIRMAN. Let us see. Let me read the first words:

*Be it enacted, etc., That the Interstate Commerce Commission shall have the power to fix the hours of labor and to determine a just and reasonable wage for the employees who are now or may hereafter be employed by any common carrier which is now or may hereafter be actually engaged in transportation.*

And so forth. Do you observe that it applies to all employees of common carriers?

Mr. DOAK. Yes.

The CHAIRMAN. And Mr. Underwood has stated that his interpretation of that is that it applies to every employee, from the highest to the lowest, including the officers and various officials of the road.

Mr. DOAK. Then why does it not say "officers"? Why does it not say it? As I understand, it is an amendment of the acts of 1887, and they cover certain classes. Now, I want to state to you that if this matter goes to the court, and I guess it would if it was passed—it seems to be customary—

Senator ROBINSON. Would the president of a railroad company be an employee of the company? I do not think he would. I think the act is subject to the criticism Mr. Doak is making.

Senator CUMMINS. I think that Senator Underwood has expressed his desire that it should be amended in that particular. I think it was asked him on the floor, and he said he would be willing to accept an amendment that would bring in all the officers of common carriers.

Senator ROBINSON. Then you would not find anybody for it probably.

Mr. DOAK. No; then you will find that the carriers will have an amendment up in the form specifically suggesting how you will fix their salaries.

Senator POMERENE. You think it should include the officers as well as the employees?

Mr. DOAK. And the attorneys and agents, and all of them if it is in behalf of the public interest.

The CHAIRMAN. If that should be done, would you still be opposed to it?

Mr. DOAK. Yes, sir; absolutely opposed to it. It denies the right of freedom of contract and absolutely enslaves these men and puts them under the jurisdiction of the Interstate Commerce Commission. You may say, "the individual may strike; there is nothing in there to prohibit a strike," but it specifically undertakes to say how long you will work and what rates of pay you will receive.

Senator ROBINSON. Well, in practical effect, it would amount to the Government fixing the salaries or wages, would it not?

Mr. DOAK. Yes, sir.

Senator ROBINSON. But the Government fixes the wages or salaries in the case of many thousands of employees who are very eager to secure the positions.

Mr. DOAK. But you fix the rates of pay, and not an appointed commission. You gentlemen fix the rates of pay for the Government employees, that are responsible to the will of the people and are elected direct representatives of the people, not an appointed commission. Congress fixes the wages and the hours of service of the employees in the Government.

Senator ROBINSON. In the theory of law that is true, but in actual practice the departmental heads and the commissions actually—

Mr. DOAK. They recommend.

Senator ROBINSON. They recommend, and they largely fix.

Mr. DOAK. But, Senator, you know you gentlemen have the say in the final analysis.

Senator ROBINSON. Of course, we have the power to—

Mr. DOAK. You have the say, but nobody else would have any say about this commission over here. No; they would say what they wanted, and nobody would have any say. The Congress of the United States delegated that power to them.

Senator ROBINSON. My impression is, however, that commissions fix higher salaries and wages than Congress itself does. That is my impression.

Mr. DOAK. Not in all instances, though.

Senator CUMMINS. For its own employees.

Mr. DOAK. Its own employees, but possibly leaving out the others to some one else.

Senator ROBINSON. Of course, the point of your argument is the preservation of the right of the freedom of contract?

Mr. DOAK. Yes, sir.

Senator ROBINSON. And as to these employees, the Underwood bill would absolutely destroy that, or is intended to do it.

Mr. DOAK. Sure; and we are unalterably opposed to it in any form, to the turning us over to the Interstate Commerce Commission, or to any other commission, in that respect. Now, gentlemen, I do not know that it is necessary for me to take up any more of your time, unless at some future time some one comes along, a carrier or somebody, that would present a statement and I would want to make a rebuttal statement.

I thank you very much for your attention.

The CHAIRMAN. Mr. Doak, are you through with your presentation?

Mr. DOAK. Temporarily I am, unless there is something else comes up.

The CHAIRMAN. The committee is very anxious to get to the consideration of these bills. I want to know whether the brotherhoods wish any further hearing.

Mr. DOAK. I just want to ask one question, Senator, if it is consistent. There was a suggestion made here a few days ago by a gentleman representing the National Civic Federation, suggesting possibly that you call in the representatives of the carriers and the executive officers of these organizations and go into a conference with them, and get out of it some means of material assistance. Have you thought of doing that before you make your final report? If you have, I think possibly we might be able to get our chief executives to attend a conference of that kind, not, as I understand, to have a hearing, but to—I was only asking for information.

The CHAIRMAN. No action has been taken by the committee upon that subject.

Mr. DOAK. I am not advocating it all. I simply asked the question because the suggestion was made to you.

Senator CUMMINS. If the executives of the railroads and the brotherhoods want to have a conference and agree among themselves, and present their combined, concerted views, I would have no objection then to receiving it, but to hold an executive session just with the chiefs of the brotherhoods and the railroads, I would be very much opposed to it.

Mr. DOAK. The reason I asked the question, Senator Cummins, was just simply because the suggestion was made, and I was not insistent upon an answer. I just asked for information.

Mr. HOLDER. Mr. Chairman, Mr. Gompers requested me to say he would prefer to wait before being heard, until after the carriers are heard, but if the carriers are not going to be heard, and if it would be otherwise agreeable to the other parties, Mr. Gompers could be heard to-morrow. He is a very, very busy man, with many duties pressing upon him, and he would like to have as much time as possible before he comes before this committee. He would prefer being the last.

The CHAIRMAN. I will state that the carriers show no disposition to appear before the committee. They have been informed that these hearings were being held and invited to participate, but thus far they have shown no inclination, so that the present indication is that they will not appear, so that you will inform Mr. Gompers that we will hear him to-morrow morning at 10 o'clock.

Mr. HOLDER. I could not do that very well, Mr. Chairman, because some of the brotherhood members want to continue after Mr. Doak. I do not want to break in upon their continuity.

Mr. WILLS. I said yesterday, before Mr. Doak spoke, that Mr. McNamara would like to be heard—for how long?

Mr. McNAMARA. I will not take up very much of your time—about 20 minutes or 30 minutes.

The CHAIRMAN. We will be very glad to hear from Mr. McNamara. Mr. McNamara, then, will be heard first and Mr. Gompers will finish to-morrow morning.

(Whereupon at 12 o'clock the committee adjourned until to-morrow, Thursday, January 11, 1917, at 10 o'clock a. m.)

# GOVERNMENT INVESTIGATION OF RAILWAY DISPUTES.

THURSDAY, JANUARY 11, 1917.

COMMITTEE ON INTERSTATE COMMERCE,  
UNITED STATES SENATE,  
Washington, D. C.

The committee met at 10 o'clock a. m. at Room 326, Senate Office Building, Senator Francis G. Newlands (chairman) presiding.

Present: Senators Cummins, Townsend, Brandegee, Pomerene, and Poindexter.

The CHAIRMAN. The committee will come to order. Mr. Doak, have you something else to present to the committee?

**STATEMENT OF MR. W. N. DOAK, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF RAILROAD TRAINMEN, ROANOKE, VA.—Resumed.**

Mr. DOAK. Mr. Chairman and gentlemen, at our hearing yesterday I was requested to furnish you with a copy of the ballot, which I agreed to do. This particular question involved in this ballot was settled by mediation and conciliation, and I present a copy, for your information, of a ballot that was used in one particular case that I happened to have handy in my office and that I picked up this morning to show you our methods.

The CHAIRMAN. The paper which you produce shows the preliminary communications with the members, etc., the statement of the case, and appended to that a ballot which they can cast for or against a proposed strike. Is that it?

Mr. DOAK. Yes, sir. As an explanation, yesterday I said we presented the ballot in an envelope. Here is a ballot just as it is presented to the employee.

The CHAIRMAN. It is in an unsealed envelope?

Mr. DOAK. Yes, sir.

The CHAIRMAN. And then the employee, having looked over the statement, appends his signature to the ballot and puts it in the envelope, seals the envelope, and hands it over to the committeeman?

Mr. DOAK. Yes, sir. He detaches the ballot—you see it is perforated—and puts this part where he votes into the envelope, seals it up, and keeps the other.

The CHAIRMAN. Keeps the statement?

Mr. DOAK. Keeps the statement; yes, sir. We could furnish you a copy of the ballot used in the eight-hour movement instead of this, or with this.

The CHAIRMAN. We would be very glad to have it. You may put in both of them.

Mr. DOAK. We have not one handy on the eight-hour movement. We can get it, though, for you.

The CHAIRMAN. It will be incorporated in the record.  
(The documents referred to are here printed in full, as follows:)

## OFFICIAL BALLOT.

NASHVILLE, TENN., November 25, 1916.

TO ALL MEMBERS OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEERS, ORDER OF RAILWAY CONDUCTORS, BROTHERHOOD OF RAILROAD TRAINMEN, AND ALL OTHER ENGINEERS, CONDUCTORS, FIREMEN, HOSTLERS, TRAINMEN, AND YARDMEN EMPLOYED ON THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

SIRS AND BROTHERS: Your committees and officers delegated by the various organizations to negotiate with the Nashville, Chattanooga & St. Louis Railway, in regard to a number of grievances, have been trying to secure a joint conference with the officials of said company since November 15, 1916, and while we have made every consistent effort to obtain a joint conference of the four organizations, they have positively declined to meet us unless we agree to separate our interests.

The handling of grievances jointly by the four organizations is a practice that is now and has been in effect for some time on many railroads of the United States. It is also true that, notwithstanding the officers of the Nashville, Chattanooga & St. Louis Railway now decline to meet the representatives of the four organizations in joint conference, the records show that this practice has been followed for some time without objection on this railroad and has only been discontinued during the handling of the matters included in the present controversy. The following correspondence will indicate in detail the position taken by the organizations and the company:

NASHVILLE, TENN., November 15, 1916.

MR. THEODORE SPEIDEN, Jr.,  
*Assistant General Manager,  
Nashville, Chattanooga & St. Louis Railway,  
Nashville, Tenn.*

DEAR SIR: As you are doubtless aware, the committee representing all the employees engaged in each particular class of transportation service governed by contracts specified as agreements between the N. C. & St. L. Ry., and its engineers, conductors, firemen, hostlers, and trainmen, have been trying to adjust certain complaints without success.

In view of the fact that the undersigned have been drawn into the matter we respectfully request that you arrange for a conference with us and the committees at the earliest date possible for the purpose of discussing the following questions:

No. 1. The use of L. & N. crews to perform N. C. & St. L. Railway switching service in Memphis yard, N. C. & St. L. crews having performed this service prior to 1914.

No. 2. Violation of agreement by a denial of overtime payment to Engineers Kiser and McClain on the W. & A. division, July 8, 1916. (Art. 36, engineers' agreement.)

No. 3. Violation of agreement by not allowing arbitrary hours to P. & N. division crews at Hollow Rock Junction. (Arts. 10, engineers; 9, firemen; 26, conductors and trainmen's agreements.)

No. 4. Violation of supplementary agreement by not placing conductor in charge of switching service—pusher engine—at Cowan. (Supplementary agreement, dated Sept. 15, 1915, provides for conductors.)

No. 5. Request that firemen be placed on switch engine at Murfreesboro.

No. 6. Request that hostler be placed at Cowan.

No. 7. Request the removal of 10 demerits recorded against record of Engineer John O'Donnell, Jr., account of alleged violation of rule No. 93, at Stevenson, February, 1916, account of train No. 8 running through a switch.

No. 8. Request the reinstatement of Engineer W. H. Lindenfield, dismissed for alleged disloyalty to the company.

No. 9. Request the reinstatement of Trainman George Hopson.

No. 10. Request that articles 32, engineers' agreement; 28, conductors and trainmen's agreement; and 29, firemen's agreement be applied on branch lines when crews are required to triple hill.

No. 11. Violation of "held away from home terminal" rules at Chattanooga.

No. 12. Request that name of Brakeman O. L. Lynch be placed on brakeman's seniority roster from the date of his last employment with the company (Sept. 18, 1916).

We will thank you for an early reply as is possible as to date of conference, care of Savoy Hotel, this city.

Very respectfully,

(Signed) F. A. BURGESS,  
A. G. C. E., B. L. E.  
(Signed) D. B. ROBERTSON,  
V. P., B. L. F. & E.  
(Signed) M. C. CAREY,  
V. P., O. R. C.  
(Signed) W. N. DOAK,  
V. P., B. R. T.

NASHVILLE, TENN., November 16, 1916.

Mr. F. A. BURGESS,

*Assistant Grand Chief Engineer Brotherhood of Locomotive Engineers.*

Mr. D. B. ROBERTSON,

*Vice President Brotherhood of Locomotive Firemen and Engineers.*

GENTLEMEN: Replying to your letter of November 15:

Before arranging for a conference with you to discuss certain complaints which the engineers and firemen whom you represent have been trying to adjust, in order that I may have before me definitely the contentions of your men I shall be pleased for you to furnish me a statement setting forth their claims in full in each case in which they are concerned.

In the last meeting with your men when some of these questions were brought to my attention an agreement was reached that certain of the claims would be decided as a result of a joint inquiry into the facts in the case. The inquiry was to be held at a point where three men in locomotive and train service could be conveniently summoned to give statements, and it was agreed that we would be bound by their interpretation of the meaning of the clause of the contract in dispute. Later your men declined to adhere to their agreement and submitted the claim to you.

Certain of the cases do not concern the men whom you represent, and we will therefore not discuss them. I refer to cases 4, 9, and 12.

Cases 10 and 11 have not been handled with me by your local representatives, and so far as I am aware no grievances have been made by the employees.

The other cases, viz. 1, 2, 3, 5, 6, 7, and 8, I shall discuss with you at a date I shall name as promptly as practicable after the receipt of the claims.

Yours, truly,

(Signed) THEODORE SPEIDEN, Jr.,  
*Assistant General Manager.*

NASHVILLE, TENN., November 16, 1916.

Mr. M. C. CAREY,

*Vice President Order Railway Conductors.*

Mr. W. N. DOAK,

*Vice President Brotherhood Railway Trainmen.*

GENTLEMEN: Replying to your letter of November 15:

Before arranging for a conference with you to discuss certain complaints which the conductors and trainmen whom you represent have been trying to adjust, in order that I may have before me definitely the contentions of your men I shall be pleased for you to furnish me a statement setting forth their claims in full in each case in which they are concerned.

In the last meeting with your men, when some of these questions were brought to my attention, an agreement was reached that certain of the claims would be decided as a result of a joint inquiry into the facts in the case. The inquiry was to be held at a point where three men in locomotive and train service could be conveniently summoned to give statements, and it was agreed that we would be bound by their interpretation of the meaning of the clause of the contract in dispute. Later your men declined to adhere to their agreement and submitted the claim to you.

Certain of these cases do not concern the men whom you represent, and we will therefore not discuss them. I refer to items 2, 5, 6, 7, 8, and 9.

Cases 10 and 11 have not been handled with me by your local representatives, and so far as I am aware no grievances have been made by the employees.

The other cases, viz., Nos. 1, 3, 4, and 12, I shall discuss with you at a date I shall name promptly after receipt of the claims in full.

Yours, truly,

(Signed)

THEODORE SPEIDEN, Jr.,  
*Assistant General Manager.*

NASHVILLE, TENN., November 16, 1916.

Mr. THEODORE SPEIDEN, Jr.,  
*Assistant General Manager,*

*Nashville, Chattanooga & St. Louis, Railway, Nashville, Tenn.*

DEAR SIR: The undersigned are in receipt of your reply to our joint communication, dated November 15, and beg to advise we understand it is your purpose to decline to meet the officers and committees representing the four train organizations in joint conference.

In seeking a joint conference with you we are following the usual practice and method that is in effect on practically all of the railroads in the United States, and we herewith reiterate our request for same, not only because it is the policy of the organizations, but in this particular controversy each of the committees are interested in the questions which we have placed before you.

Awaiting your reply, which can reach us care Savoy Hotel,

Yours, respectfully,

(Signed)

F. A. BURGESS,  
*A. G., C. E., B. L. E.*

(Signed)

D. B. ROBERTSON,  
*V. P., B. L. F. & E.*

(Signed)

M. C. CAREY,  
*V. P., O. R. C.*

(Signed)

W. N. DOAK,  
*V. P., B. R. T.*

NASHVILLE, TENN., November 17, 1916.

Mr. F. A. BURGESS,

*Assistant Grand Chief Engineer, Brotherhood of Locomotive Engineers.*

Mr. D. B. ROBERTSON,

*Vice-President, Brotherhood of Locomotive Firemen and Engineers.*

GENTLEMEN: Replying to joint letter received from you, bearing date of November 16:

Although my letter of the 16th did not specifically state that I was unwilling to receive in conference representatives of the enginemen and firemen together with representatives of the conductors and trainmen, yet that was my feeling and also my intention in addressing my answer to you separately.

I do not know any valid reasons why we should receive as parties to any conference representatives of organizations which are not interested, except as outsiders, in the questions at issue. Our contracts with our men do not provide for matters affecting wages and working conditions of engineers and firemen to be handled in conference with representatives of conductors and trainmen, and vice versa. We propose to adhere to the provisions of our contracts.

As to what is the usual practice on other railroads and the conditions affecting such practices, I am now seeking information.

Yours, truly,

(Signed)

THEODORE SPEIDEN, Jr.,  
*Assistant General Manager.*

NASHVILLE, TENN., November 17, 1916.

Mr. M. C. CAREY,

*Vice President, Order of Railway Conductors.*

Mr. W. N. DOAK,

*Vice President, Brotherhood of Railway Trainmen.*

GENTLEMEN: Replying to joint letter received from you, bearing date of November 16th:

Although my letter of the 16th did not specifically state that I was unwilling to receive in conference representatives of the enginemen and firemen together

with representatives of the conductors and trainmen, yet that was my feeling and also my intention in addressing my answer to you separately.

I do not know any valid reasons why we should receive as parties to any conference representatives of organizations which are not interested, except as outsiders, in the questions at issue. Our contracts with our men do not provide for matters affecting wages and working conditions of engineers and firemen to be handled in conference with representatives of conductors and trainmen, and vice versa. We propose to adhere to the provisions of our contracts.

As to what is the usual practice on other railroads and the conditions affecting such practices, I am now seeking information.

Yours, truly,

(Signed)

THEODORE SPEIDEN, Jr.,  
Assistant General Manager.

NASHVILLE, TENN., November 17, 1916.

Mr. THEODORE SPEIDEN, Jr.,

Assistant General Manager,

Nashville, Chattanooga & St. Louis Ry., Nashville, Tenn.

DEAR SIR: We are in receipt of your communication by special messenger, dated November 17, 1916, and beg to advise the purpose of our letter reiterating the request for a joint conference was to ascertain whether you would or would not meet the officers and committees of the four train organizations in joint conference.

We now ask you to please advise us definitely on this matter. If it is your intention to decline to meet the officers and committees in joint conference, it is our duty to advise you that it is futile to expect an adjustment, as we are not disposed to surrender a policy approved by the four train organizations.

Yours, respectfully,

(Signed)

F. A. BURGESS,  
A. G. C. E., B. L. E.

(Signed)

D. B. ROBERTSON,  
V. P., B. L. E. & E.

(Signed)

M. C. CAREY,  
V. P., O. R. C.

(Signed)

W. N. DOAK,  
V. P., B. R. T.

NASHVILLE, TENN., November 19, 1916.

Mr. F. A. BURGESS,

A. G. C. E., Brotherhood of Locomotive Engineers,

Savoy Hotel, Nashville, Tenn.

Mr. D. B. ROBERTSON,

V. P., Brotherhood of Locomotive Engineers and Firemen,

Savoy Hotel, Nashville, Tenn.

GENTLEMEN: I have received your letter of November 17th, requesting a more definite statement from me as to whether or not I would meet the officers and committees of the four trainmen's organizations in joint conference.

I regarded my letters of November 16 and 17 as a definite reply to your inquiries. However, as you now desire a categorical answer to your question. I will say that I will not arrange for joint conference with the representatives of the four trainmen's organizations as you have requested.

I shall arrange for a conference with representatives of the conductors and trainmen jointly, and for a conference with representatives of the enginemen and firemen jointly, to discuss the subjects in question, as stated in my letter of November 16; that is to say, in accordance with the provisions of our contracts with the different organizations.

Yours, truly,

(Signed)

THEODORE SPEIDEN, Jr.,  
Assistant General Manager.



NASHVILLE, TENN., November 19, 1916.

Mr. M. C. CAREY,

V. P., *Order Railway Conductors, Savoy Hotel, Nashville, Tenn.*

Mr. W. N. DOAK,

V. P., *Brotherhood Ry. Trainmen, Savoy Hotel, Nashville, Tenn.*

GENTLEMEN: I have received your letter of November 17, requesting a more definite statement from me as to whether or not I would meet the officers and committees of the four trainmen's organizations in joint conference.

I regarded my letters of November 16 and 17 as a definite reply to your inquiries. However, as you now desire a categorical answer to your question. I will say that I will not arrange for joint conference with the representatives of the four trainmen's organizations, as you have requested.

I shall arrange for a conference with representatives of the conductors and trainmen jointly, and for a conference with representatives of the enginemen and firemen jointly, to discuss the subjects in question, as stated in my letter of November 16; that is to say, in accordance with the provisions of our contracts with the different organizations.

Yours, truly,

(Signed) THEODORE SPEIDEN, Jr.,  
Assistant General Manager.

NASHVILLE, TENN., November 20, 1916.

Mr. THEODORE SPEIDEN, Jr.,

Assistant General Manager, Nashville, Chattanooga & St. Louis Ry.,  
Nashville, Tenn.

DEAR SIR: We are in receipt of your letter under date November 19, 1916, refusing to arrange for a joint conference with the representatives of the four train organizations, namely: Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, Brotherhood of Railroad Trainmen.

This is to advise your decision is unsatisfactory and the matter will be appealed to the president.

Yours, respectfully,

(Signed) F. A. BURGESS,  
A. G. C. E., B. L. E.  
(Signed) D. B. ROBERTSON,  
V. P., B. L. F. & E.  
(Signed) M. C. CAREY,  
V. P., O. R. C.  
(Signed) W. N. DOAK,  
V. P., B. R. T.

NASHVILLE, TENN., November 20, 1916.

Mr. JOHN HOWE PEYTON,

President Nashville, Chattanooga & St. Louis Ry., Nashville, Tenn.

DEAR SIR: We herewith attach a copy of a list of grievances that we submitted to the assistant general manager, Mr. Theodore Speiden, Jr., with the hope that we could promptly secure an amicable adjustment of same.

Mr. Speiden declines to meet the representatives in joint conference, which necessitates an appeal to you.

Therefore we respectfully request a joint conference with you at your earliest convenience.

Yours, respectfully,

(Signed) F. A. BURGESS,  
A. G. C. E., B. L. E.  
(Signed) D. B. ROBERTSON,  
V. P., B. L. F. & E.  
(Signed) M. C. CAREY,  
V. P., O. R. C.  
(Signed) W. N. DOAK,  
V. P., B. R. T.

## MEMORANDUM OF GRIEVANCES FILED WITH ASSISTANT GENERAL MANAGER.

No. 1. The use of L. & N. crews to perform N., C. & St. L. Railway switching service in Memphis yard. N., C. & St. L. crews having performed this service prior to 1914.

No. 2. Violation of agreement by a denial of overtime payment to Engineers Kiser and McClain, on the W. & A. division, July 8, 1916. (Article 36, engineers' agreement.)

No. 3. Violation of agreement by not allowing arbitrary hours to P. & M. division crews at Hollow Rock Junction, articles 10, engineers; 9, firemen; 26, conductors and trainmen's agreement.

No. 4. Violation of supplementary agreement by not placing conductor in charge of switching service—pusher engine at Cowan. Supplementary agreement, dated September 15, 1915, provides for conductors.

No. 5. Request that firemen be placed on switch engine at Murfreesboro.

No. 6. Request that hostler be placed at Cowan.

No. 7. Request the removal of 10 demerits recorded against record of Engineer John O'Donnell, jr., account of alleged violation of rule No. 93, at Stevenson, February, 1916, account of train No. 8 running through switch.

No. 8. Request the reinstatement of Engineer W. H. Lindenfield, dismissed for alleged disloyalty to the company.

No. 9. Request the reinstatement of Trainman George Hopson.

No. 10. Request that articles 32 engineers' agreement, 28 conductors and trainmen's agreement, and 29 firemen's agreement be applied on branch lines when crews are required to triple hill.

No. 11. Violation of "held away from home terminal" rules at Chattanooga.

No. 12. Request that name of Brakeman O. L. Lynch be placed on brakemen's seniority roster from the date of his last employment with the company (Sept. 18, 1916).

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NASHVILLE, TENN., November 22, 1916.

Mr. JOHN HOWE PEYTON,  
President Nashville, Chattanooga & St. Louis Railway,  
Nashville, Tenn.

DEAR SIR: Referring to our communication dated November 20, 1916, delivered at your office by special messenger:

We wish to inform you that as yet no reply has reached us, and the purpose of this letter is to ascertain when we may expect a reply, and we would thank you to promptly advise us to this effect.

We are very anxious to reach an amicable adjustment of the complaints referred to you and thus avoid undesirable publicity, but we feel we have waited a reasonable length of time for your reply, and the duty we owe to our constituents makes it obligatory upon us to again write you. If we are to understand that our letters are to be disregarded we, of course, have no alternative except to take such action as we feel the situation warrants.

Reply will reach the undersigned, care of Savoy Hotel.

Yours, respectfully,

(Signed) F. A. BURGESS,  
A. G. C. E., B. L. E.  
(Signed) D. B. ROBERTSON,  
V. P., B. L. F. & E.  
(Signed) M. C. CAREY,  
V. P., O. R. C.  
(Signed) W. N. DOAK,  
V. P., B. R. T.

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NASHVILLE, TENN., November 22, 1916.

Mr. F. A. BURGESS,  
Assistant Grand Chief Engineer,  
Brotherhood of Locomotive Engineers,  
Care Savoy Hotel, Nashville, Tenn.

Mr. D. B. ROBERTSON,  
Vice President, Brotherhood of Locomotive Firemen and Enginemen,  
Care Savoy Hotel, Nashville, Tenn.

GENTLEMEN: Your letters of November 20 and 22 were duly received. I note that Assistant General Manager Theodore Speiden, jr., in his letter to you dated November 19 uses the following language.

"I will say that I will not arrange for joint conference with the representatives of the four trainmen's organization as you have requested. I shall arrange for a conference with the representatives of the conductors and trainmen jointly and for a conference with the representatives of the enginemen and firemen jointly to discuss the subjects in question, as stated in my letter of November 16; that is to say, in accordance with the provisions of our contracts with the different organizations."

Mr. Speiden has correctly stated the position taken by the management of this company.

Yours, truly,

(Signed) JNO. HOWE PEYTON, *President.*

NASHVILLE, TENN., November 22, 1916.

Mr. M. C. CAREY,  
V. P., *Order Railway Conductors,*  
*Care Savoy Hotel, Nashville, Tenn.*

Mr. W. N. DOAK,  
V. P., *Brotherhood Railway Trainmen,*  
*Care Savoy Hotel, Nashville, Tenn.*

GENTLEMEN: Your letters of November 20 and 22 were duly received. I note that Assistant General Manager Theodore Speiden, jr., in his letter to you dated November 19 uses the following language:

"I will say that I will not arrange for joint conference with the representatives of the four trainmen's organization as you have requested. I shall arrange for a conference with representatives of the conductors and trainmen jointly and for a conference with the representatives of the enginemen and firemen jointly to discuss the subjects in question, as stated in my letter of November 16; that is to say, in accordance with the provisions of our contracts with the different organizations."

Mr. Speiden has correctly stated the position taken by the management of this company.

Yours, truly,

(Signed) JNO. HOWE PEYTON, *President.*

NASHVILLE, TENN., November 23, 1916.

Mr. JOHN HOWE PEYTON,  
*President Nashville, Chattanooga & St. Louisville Railway,*  
*Nashville, Tenn.*

DEAR SIR: Replying to your communication dated November 22, 1916, we beg to advise your decision is unsatisfactory, and accordingly the four general committees are being convened for the purpose of submitting your position, together with pending grievances, to them, and you will be advised later of conclusions reached.

Yours, respectfully,

(Signed) F. A. BURGESS,  
*A. G. C. E., B. L. E.*  
(Signed) D. B. ROBERTSON,  
*V. P., B. L. F. & E.*  
(Signed) M. C. CAREY,  
*V. P., O. R. C.*  
(Signed) W. N. DOAK,  
*V. P., B. R. T.*

NASHVILLE, TENN., November 25, 1916.

Mr. JOHN HOWE PEYTON,  
*President Nashville, Chattanooga & St. Louisville Railway,*  
*Nashville, Tenn.*

DEAR SIR: Pursuant to our letter of the 23d instant, this is to advise that the full committees representing the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and the Brotherhood of Railroad Trainmen have been convened in joint session, and they have approved the position taken by the joint committees

and officers of the organizations, which is disclosed in the correspondence exchanged with yourself and Assistant General Manager Speiden.

We are to-day referring the entire matter to the employees interested in a strike referendum ballot and will again communicate with you when the vote has been canvassed.

Yours, respectfully,

(Signed) F. A. BURGESS,  
A. G. C. E., B. L. E.  
(Signed) D. B. ROBERTSON,  
V. P., B. L. F. & E.  
(Signed) M. C. CAREY,  
V. P., O. R. C.  
(Signed) W. N. DOAK,  
V. P., B. R. T.

In view of the position taken by the officials of the Nashville, Chattanooga & St. Louis Railway, as shown by the correspondence included herein, there is nothing left for the committees and officers of the organizations to do but refer the entire matter to the members in accordance with the laws of the organizations interested for you to decide whether you will support the position taken by them in this controversy.

You will please understand that if you vote in favor of a strike you will be asked to peaceably withdraw from the service and engage in a legal strike to be conducted under the laws of the organizations interested, unless a satisfactory settlement of the pending controversy can otherwise be obtained.

Employees not members of either of the four organizations and who express their views by voting with the organizations will be given the same consideration accorded to the members.

Respectfully submitted.

J. H. WELCH,  
Chairman B. of L. E.  
W. J. PORTER,  
Vice Chairman B. of L. E.  
E. SNEED,  
Secretary B. of L. E.  
W. H. HOLLAND,  
Chairman B. of L. F. & E.  
H. H. WESTMORELAND,  
Vice Chairman B. of L. F. & E.  
R. B. WILKINS,  
Secretary of B. of L. F. & E.  
W. P. SUTTON,  
Chairman O. R. C.  
A. T. THOMPSON,  
Vice Chairman O. R. C.  
J. O. HARGIS,  
Secretary O. R. C.  
J. A. KIMBRO,  
Chairman B. R. T.  
W. E. BURGESS,  
Vice Chairman B. R. T.  
W. A. SUMMERLIN,  
Secretary B. R. T.

Approved:

F. A. BURGESS,  
Assistant Grand Chief, Brotherhood of Locomotive Engineers.  
D. B. ROBERTSON,  
Vice President, Brotherhood of Locomotive Firemen and Enginemen.  
M. C. CAREY,  
Vice President Order of Railway Conductors.  
W. N. DOAK,  
Vice President, Brotherhood of Railroad Trainmen.

## BALLOT.

Having read the foregoing statement, I cast my vote \_\_\_\_\_ a strike,  
 (For or against.)  
 provided a satisfactory settlement can not be otherwise obtained. I understand should a strike take place it will be conducted strictly in accordance with the laws of the respective organizations.

Signed_____	Occupation_____
Member of Division No.____B. of L. E.	Member of Division No.____O. R. C.
Member of Lodge No.____B. of L. F. & E.	Member of Lodge No.____B. of R. T.
Nonmember _____	

NOTE.—If not a member of either organization indicate by "X" in space following "nonmember."

The CHAIRMAN. The committee will now hear Mr. McNamara.

**STATEMENT OF MR. P. J. McNAMARA, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, WASHINGTON, D. C.**

The CHAIRMAN. Mr. McNamara, will you state your full name and position?

Mr. McNAMARA. My name is P. J. McNamara; vice president and national legislative representative Brotherhood of Locomotive Firemen and Enginemen. My home address is Buffalo, N. Y.; business address, 101 B Street Southeast, Washington, D. C.

Mr. Chairman and members of the committee, first I want to go on record as being unalterably opposed to any form of compulsory investigation; and by request of the Chairman I will leave out the word "arbitration."

I do not think that it is necessary for me to go into the form of compulsory investigations that have been in existence in all foreign countries; nor is it necessary for me again to go into the form of investigations that are in existence at this time in this country. The form of mediation and arbitration that is in existence in this country has been gone into thoroughly by previous speakers, particularly Mr. Doak, who has spoken for the past two days; and the good results that have come from it indicate clearly in my opinion that there is no reason for any compulsory investigation.

We feel that until such time as Congress shall find a way to compel the railroads to put into effect the law that they passed there should be no more legislation in connection with matters that were contemplated during the month of August, or on the 4th of September. And when that law was not put into effect on the 1st day of January, 1917, it is evident that there are no more law-abiding citizens in the United States than the members of those brotherhoods, when they agreed to postpone the contemplated strike that was to take effect on September 4. That they have demonstrated by their action in not going and assisting Congress to put into effect the law that you gave them, by not going on strike on the 1st day of January, 1917. Therefore, it is my opinion that passing laws for compulsory investigations will tend to incense the men to do things that their own laws now forbid them to do.

I do not want to take up much of your time this morning, but I would like to insert in the record an article written by W. S. Carter, president of the Brotherhood of Locomotive Firemen and Engine-

men. It is not a long article. If it would be the desire of the members of this committee to have me read it I will gladly do so; but to save time, if there is no objection, I would like to have it embodied in the proceedings.

The CHAIRMAN. Without objection, it will be incorporated in the record.

Mr. McNAMARA. The article is headed: "What the railroad employees are fighting for," and presents the men's side in the enactment of the eight-hour law.

Senator CUMMINS. When was it written, Mr. McNamara?

Mr. McNAMARA. About four weeks ago.

(The article referred to is here printed in full as follows:)

[New York Times Magazine, Dec. 10, 1916.]

#### WHAT THE RAILROAD EMPLOYEES ARE FIGHTING FOR.

PRESIDENT OF BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS PRESENTS  
THE MEN'S SIDE IN THE ENACTMENT OF AN EIGHT-HOUR LAW.

[By W. S. Carter, President of Brotherhood of Locomotive Firemen and Engineers.]

Much has been said during recent years with regard to "speeding-up" systems in the employment of workers. These so-called efficiency methods have included the old "piecework" and "bonus" systems of wage payments. These methods have usually been discussed as innovations and have been opposed by the workers in most industries, although for nearly half a century railroads have enforced both piecework and the bonus methods of payments upon their employees in train service. Although effecting a wide difference in the earning power of individual employees, this system nevertheless has become popular with them.

Except on the large proportion of railroads where the eight-hour-wage basis has already been adopted, the rule usually found in wage agreements for freight service is "10 hours or less, 100 miles or less, constitutes a day." Under this rule an employee is guaranteed not less than one day's pay for a single period of service, although his true basis of that day's pay is 100 miles.

If employees engaged in transporting a freight train over a division of railway average 10 miles per hour, or complete the 100 miles in 10 hours, each of them receives one day's pay at the rate specified in the agreement. If the train is transported 150 miles in 15 hours, each is paid for one and one-half days. Such payments are based on the piecework system; so much per 100 miles, so long as the "miles equal or exceed the hours."

Should the work of transporting the train become so laborious as to reduce the speed below an average of 10 miles per hour, wages cease to be paid on the "mileage basis," or piecework plan, and are then paid on the "hourly basis," at the rate of one-tenth of a day's pay for each hour in service. Thus, if the train is transported 100 miles in 12 hours each employee is paid for 12 hours' work, or twelve-tenths of a day's pay, regardless of the miles.

In this manner overtime begins "when the hours exceed the miles," and overtime being paid "pro rata," as described in railway-wage agreements, inflicts no penalty upon the employer, for, being in most cases the result of heavy trains, it is said to be an evidence of managerial efficiency, because it usually develops a reduction in wage cost per "ton-mile," although it shows an increase in wage cost per "train-mile."

Formerly, when the capacity of the locomotive was not so heavily taxed by train loading, a bonus was devised by which it was believed that the speed of trains would be accelerated. A train crew that transported a train 100 miles in less than 10 hours was paid as much as though it had consumed the entire 10 hours. This was a source of high earnings to the employees, for if the locomotive was equal to the task it was possible for the employees to make 150 miles (one and a half days' pay) within a 10-hour period.

Twenty-five years ago employees expected to "make mile" and receive these bonus payments for a great majority of trips. Where it was evident that this could not be done a higher rate per "day" was usually agreed upon, as in local freight service.

With this detailed description of a complicated wage system, the reader may readily understand that if by loading trains to capacity of locomotives speed is reduced to less than an average of 10 miles per hour, all profit to the employee from the bonus system disappears. From a pieceworker receiving additional payments for premiums on speed, he develops into a worker paid by the hour, with no extra compensation for overtime and no limit for his "day" except the Federal "16-hour law," which in many instances does not apply.

The rate of wages per hour, as agreed upon under this bonus system, has always been much less than in industries where men have a fixed day's work. For instance, skilled workers in the building trades usually receive a rate of wages per hour 25 per cent to 40 per cent higher than locomotive engineers and conductors, and wages of unskilled building laborers in many instances are higher than those of engineers and conductors, and greatly exceed the wage rates of locomotive firemen, brakemen, and switchmen.

Railway wage statistics show that by the overloading of freight trains, which in many instances eliminated the mileage basis of payments to employees, the wage cost to the railroads per ton-mile of freight traffic has been greatly reduced. Also, the earnings of employees for a 10-hour day have decreased greatly as a necessary consequence of the decline in the average speed of trains.

Notwithstanding these changed conditions, the railroads are able to demonstrate that their employees earn large amounts during months of heavy traffic. It was shown in a recent arbitration that some engineers in freight service earned over \$200 during the month of October, 1913, and some firemen earned more than \$125 during the same period.

An investigation of these cases of apparently very high wages discloses facts of which the following examples are typical: One engineer earned \$212.95 in one month. He did it by working 395 hours during that month; that is, he worked the equivalent of 49.2 days of eight hours each during that one month. His average rate of wages was 53.9 cents per hour. Again, a fireman who earned \$135.29 in that one month worked 412.7 hours, or an equivalent of 51.6 days of eight hours. His average rate of wages was 32.8 cents an hour.

That these highly paid and overworked men in freight service are a menace to public safety is well known to everybody—except the public. They serve a purpose, however, by convincing arbitrators and the public that railroad employees are already receiving a high rate of compensation and should not be granted relief.

This steady increase in the number of hours of work has been the only way in which the railroad employee has been able to keep his total daily wage up to the level at which it was in the days when it was possible to earn his bonus by covering more than 10 miles an hour. Every increase in size of freight locomotive and tonnage of freight train has meant that the employee must work longer in order still to earn the same daily wage.

Naturally, strenuous efforts have been made by the employees to change this situation and to secure an increase in the rate of wages an hour so it might be the equal of that in the building or other trades, and that a fair day's wage might be earned without working overtime.

Their only hope was a change from a 10 to an 8 hour basis of pay. As an arbitration board had declined to reduce the locomotive hostler's 12-hour day to 10 hours, and other arbitration boards had refused to increase the rate of pay per hour, there was not much to expect in that direction. So with the expectation of a possible conflict they demanded the substitution of the 8-hour for the 10-hour basis in existing wage schedules and an overtime rate of time and one-half.

That what was really demanded was a lessening of hours of work is shown by the fact that in terminal work also, where engineers, conductors, switchmen, firemen, and hostlers are employed entirely on the hourly basis, the demand was the same for an eight-hour day, with time and one-half for any work requiring more than 8 hours in a period of 24.

This demand for an eight-hour day meant a reduction in earnings for the large number of men theretofore working more than 10 hours a day. Their opportunity to earn more than one day's wage was eliminated through the "penalty" overtime provision, because in terminal work the railroad can always change crews when the eight hours are up, and naturally will do so and employ a new crew rather than pay extra overtime rates. The employees sacrificed higher wages in order to get shorter hours.

The cost to the railroads by applying the eight-hour basis to freight service would be apparent only when speed of trains was less than 12½ miles an hour.

So long as the average speed—from the time the employees began service until relieved—equaled or exceeded 100 miles to eight hours, the change of basis would cost the railroads nothing and would add nothing to the earnings of employees. In freight service only when the period of service extended into overtime would cost to railroads and earnings for the men increase.

It was contended by the employees that when freight trains moved at a speed averaging less than 100 miles for eight hours an injustice was done not only to them but to the public, suffering from what the railroads claimed was a "car shortage." The eight-hour day in freight service, accompanied with time and one-half for extra work, would, it was claimed, not only reduce the hours worked by the employee but result in more expeditious movement of the public's commodities.

In terminal work, theoretically, it would increase the cost to the railroads 25 per cent without adding to the earnings of the individual employee. It was assumed by the railroads that where two 10-hour shifts of men are now used with one switching locomotive in a terminal "costing two days' wages, there would be three eight-hour shifts costing three days' wages."

In practice a large majority of switching locomotives would be operated for only two eight-hour shifts—performing all work now done at no additional cost. Where it was necessary to operate a locomotive continuously three eight-hour shifts would be employed, each shift receiving one day's pay. But the three shifts would render 4 to 6 hours more service in each 24-hour period than at present, for there would be no intervals between shifts of crews, and the present practice of stopping one hour for meals at midday and midnight would be discontinued.

Those who followed the negotiations between committees representing the railroads and employees soon discovered that neither side would concede anything. The employees seemed determined to yield no important part of their demand. The railroads were just as fixed in their avowed purpose to compel employees to submit their demands to arbitration.

The railroads had, with the knowledge of their employees, worked their clerical force overtime for almost a year on nearly every railroad involved, preparing for an arbitration that they expected to force upon the employees. According to good authority, these railroads had expended huge sums of money to advertise in more than 3,000 daily and more than 14,000 weekly newspapers, by which means they had created a public opinion in favor of arbitration of the employees' demands and a feeling that their demands were unjust and must not be conceded by arbitration, because it would cost the public \$100,000,000 per year in increased freight rates. The employees rejected arbitration for several reasons. First, with practically all of the public press against them, a public opinion had been created which made it improbable that any arbitration board would possess the courage to "tax the public \$100,000,000 in increased freight rates," even if the neutral arbitrators believed the demands of the employees entirely just.

Second, the mass of statistical evidence that the railroads had prepared would probably overwhelm the arbitrators. Although it would be recognized as purely partisan evidence, the employees had no means of proving it inaccurate. Until such time as this class of information is gathered by governmental authority the employees believe its presentation unfair in arbitrations of wage matters.

Third, the standard of qualifications for a neutral arbitrator, officially defined by the Federal Board of Mediation and Conciliation, was grossly unfair to the employees. In the last great arbitration it was discovered by the employees, after the hearings had been almost completed, that one of the neutral arbitrators had large pecuniary interests in the result of the award. Official protest was made to the Federal Board of Mediation and Conciliation that he was a director in a certain trust company that held \$12,500,000 in first mortgage bonds of one of the railroads parties to the arbitration, and as trustee or director held many more millions of dollars of the securities of other railroads upon whose wage controversy he was passing judgment.

In reply the employees were informed by the Federal Board of Mediation and Conciliation:

"A knowledge of that fact would have been favorable, rather than otherwise, to his appointment, and nothing has been brought to our notice since his appointment as an arbitrator which, in our opinion, disqualifies him as an arbitrator."



It was this incident that caused the convention of one organization of employees to issue instructions to its executive officer to resort to a strike rather than submit the eight-hour demand to arbitration.

It is not that the employees question the honesty or integrity of such an arbitrator; their attitude, however, is that he is unconsciously influenced by his environment, by the fact that a decrease in railroad dividends is an evil nearer home and more real to him than the evils resulting from overworking railroad employees.

A truly neutral arbitrator must be one who has not even this unconscious bias; he must be neither a "gentleman" who is a stranger to the life of the working man, nor must he be a demagogic agitator who has a violent prejudice against all wealth. He must, in short, be one who has broad understanding and equal sympathy with both sides to the dispute.

Fourth, if precedent was to influence subsequent decisions there would be no chance to secure an eight-hour day through arbitration. In the western district locomotive hostlers were then and now are required to work 12 hours out of every 24, including Sundays. An arbitration under the Federal law decided that they must continue to work 12 out of 24 hours, including Sundays.

If employees could not secure a reduction of hours from 12 to 10 through arbitration, what hopes could they have that they would secure an 8-hour day through arbitration?

Fifth, the railroads, while proposing arbitration, refused to permit about 75 of the smaller roads to participate in their arbitration. Where these railroads believed that the small number of employees made it impossible for them to win a strike they refused to delegate authority to the railroad's committee to include them in the arbitration. The employees were not willing to arbitrate for only the larger railroads. Furthermore, the railroads refused to permit the locomotive hostlers on about 18 railroads to participate in their proposed arbitration. Also, the railroads refused to include in their proposed arbitration white firemen, brakemen, and hostlers on many railroads, and no colored employee. No negro employee was to benefit by the arbitration.

Finally, the administration of all wage agreements, whether reached through negotiations or by arbitration, is in the hands of the railroads. Both the officials and employees are prone to interpret such agreements in a manner that will be most profitable to themselves, but the employees have no method of enforcing their interpretation, while the railroads seldom fail to do so.

In every arbitration award many of the railroads have so interpreted the award that what was intended by the arbitrators for wage increases actually became wage decreases. Under the old Erdman Act there was no relief from such abuses. Under the present Newlands Act provisions are made for referring back to the arbitrators disputes arising out of the interpretation of the law, but this does not entirely remedy the evil, for the railroads usually manage to interpret the award as best serves their interest, and when the arbitration board again passes upon the matter often another dispute arises out of what was meant by the arbitration board in its last decision.

It is a fact that no arbitration covering a large number of railroads has ever been applied in its entirety. It is not unusual for one railroad to decline to pay what is asked by the employee under a certain clause of an award, stating specific reasons therefor, and at the same time another railroad has placed a reversed interpretation upon the same clause when by doing so it will effect the reduction in the wages of the employees of that road under the wage agreement there in effect.

An arbitration award should be administered by governmental authority when such arbitration is decided under a Federal law.

These, in brief, are the chief reasons why the employees were unwilling to submit their demands to arbitration and instructed their delegates to order a strike if the railroads refused their demands.

After the employees' committee had made all arrangements for the strike, President Wilson asked that he be permitted to mediate before the men left the service. Both committees moved from New York to Washington. The President summoned each committee to the White House separately and learned the contentions of each.

When it became evident to him that neither would concede anything to the other, he proposed to both that—

1. The eight-hour demand be conceded by the railroads.
2. The demands for time and one-half for overtime and the change in rules proposed by the railroads be postponed.

3. A governmental commission be appointed to investigate the effect of the change to the eight-hour wage basis and report.

4. After the report the overtime questions and changes in rules proposed by the railroads be a matter for negotiation between the two committees.

While the employees' committee accepted the plan proposed by the President, it was not without strong opposition of many members of that committee, who contended that without a punitive overtime rate the men would continue to be worked beyond reasonable hours.

The railroads' committee, and the railroad presidents that succeeded their committee, made no concession and refused to accept the President's proposition. Eleven days after the President's proposition was accepted by the employees' committee, and when it was learned that the railroads had finally refused to accept the plan of settlement, the employees' committee reaffirmed its strike order, set the time for the men to leave the service, and left for their respective official stations.

It was at this stage that the President addressed the Congress and laid before it his proposed legislative program. The employees' subcommittee, composed of 15 men, including executives of the four employees' brotherhoods left in charge of the situation at Washington, were bound by specific instructions not to recall the strike order unless the railroads accepted the President's proposed settlement of the matters in dispute.

When the subcommittee was urged to delay the strike it could only reply that it was beyond its power to do so unless the railroads accepted the President's proposition. To some critics it appeared strange that this subcommittee would not violate its instructions and betray the trust imposed upon it.

During the debate in Congress the subcommittee of employees was asked if the enactment of the Adamson bill would prevent the strike. In reply these men said that, inasmuch as the Adamson bill would accomplish the same purpose as the proposition of the President, which had been accepted by the entire committee, the bill when enacted into law would prevent the strike.

At no time did employees ask for the enactment of the Adamson bill, or for any other legislation upon the subject. If the eight-hour basis can be established in another manner the employees would be glad to have the law repealed. But if railroads refuse to grant the eight-hour day, and arbitration boards refuse to award the eight-hour day, and employees are deprived of their right to strike for the eight-hour day, Federal legislation is the one remaining remedy.

As to employees coercing the President and Congress and forcing the enactment of the Adamson law, such an accusation was but an unhappy political "boomerang." The charge was so unjust that many thousands of railway employees and other workers reversed their political affiliations of a lifetime.

If any were coerced they were the employees, for when told by the President that they must not strike, they yielded their demand for time and one-half for overtime, which they still insist is essential if overtime is to be averted. When Congress enacted the Adamson law it coerced (if any one was coerced) the subcommittee of the employees so that they accepted that law in lieu of the President's proposition, if there is a difference between them.

The employees' committee saw no "big stick" around the White House, but they met the firm determination of the President to establish the eight-hour day and at the same time to prevent a strike. Of all the employees' committeemen and officers, almost 600 in number, who participated in these momentous happenings, there is not one who will not smile at the humor lurking in the charge that the President was coerced. Before he proposed the eight-hour day he expressed the belief that it was right, and then he proceeded to get it. He said there should be no strike and there was none.

Mr. McNAMARA. I am only going to answer, or try to answer, some of the questions that have been put to other witnesses here by the chairman and others, and do not intend to go into a general discussion, as that has been covered principally by Mr. Doak in behalf of the four brotherhoods.

A question was asked of Mr. Furuseth the other day when he was on the stand, by Senator Newlands, in connection with the large sum of money that is set aside for strike benefits or to fight the railroad corporations in such a large strike as was contemplated on

September 4 last. Mr. Furuseth was not in position to answer that question, but I will try to do so now by denying that there is such a fund. There is a fund to pay the men in case of a strike legally called, in compliance with their laws, which is a very small amount payable to each member per day. But in such an undertaking as this that was contemplated there have been some of the organizations, or members of the organizations, who agreed that no strike benefits would be paid to them in case of a strike, as was contemplated. Therefore the reason I mention this is that the men were not going on strike for the purpose of receiving strike benefits when they agreed to eliminate or declined to accept them; but they were going on strike after all else had failed to bring justice in the shape of a shorter working day.

Senator TOWNSEND. Are those payments of strike benefits anything like the wages the men are receiving when they are not on a strike?

Mr. McNAMARA. No, sir.

Senator TOWNSEND. What is the amount of them per capita?

Mr. McNAMARA. The members of the Brotherhood of Locomotive Firemen and Enginemen receive \$1 a day.

Mr. DOAK. The trainmen receive \$40 a month.

Mr. WILLS. The locomotive engineers receive \$60 a month for not to exceed three months.

Senator TOWNSEND. Simply for my own information, what is the distinction between a fireman and an engineman? What is the engineman—a helper to the fireman?

Mr. McNAMARA. No, Senator. It is called the Brotherhood of Locomotive Firemen and Enginemen. There are many engineers in the Brotherhood of Locomotive Firemen and Enginemen who have never severed their connection with that organization, and there are many engineers who hold their membership in the firemen and still are members of the engineers' brotherhood. It was done on account of the insurance that is carried. All firemen must take out insurance when they join the brotherhood, for the protection of themselves and their families, in case of death, which they are subject to meet on the rail every time they go out, and to keep them somewhat independent, and so that their families will not become immediately destitute; for the wages that they receive are so small that they are unable to put any away, and therefore they are all insured—the insurance carried by the brotherhood at a very low premium.

Senator BRANDEGEE. Most of the engineers were formerly firemen, were they not?

Mr. McNAMARA. Pretty nearly all of them; all of them, I must say. They were all firemen at one time. That is, in years past it may be possible that through some influence or other a man may have got to run an engine without going through; but since the seniority rule has come into effect they have got to serve their apprenticeship, which means anywhere from 4 years to 15 years.

Senator BRANDEGEE. I did not want to divert you from your argument. This is a little aside. I do not want you to waste your time on this, because I do not think it is important to this particular case; but do as you please about it.

Mr. McNAMARA. A man who becomes a fireman has got to undergo a very severe physical examination. There is nothing in the Navy or the Army that excels it. He is fit for any position in the Army or Navy if he is fit to be a locomotive fireman and has passed that examination.

Senator TOWNSEND. These examinations are prescribed by the railroad companies?

Mr. McNAMARA. Yes, sir. Men who are in the service for years have got to undergo those examinations or tests. They keep everlastingly examining them. Therefore, when a man enters the service his duties, as far as examinations are concerned, do not end there. In addition to the physical examination, he is also examined on mechanics, air brakes, and all that, and he is examined on them once each year. So it requires a man of knowledge, a man that has got to keep up and not let any rust get on him, to remain in the service of a railroad corporation in either running or firing a locomotive or running or managing a train, such as conductors and trainmen. They all undergo those examinations.

But the men find that on account of the long service they are compelled to perform, and the long hours that they are compelled to be on duty, they are unable to keep up with this, and they require some time for those studies and those examinations that they are compelled to undergo.

To-day we are receiving letters in the bureau of information over here in connection with the long hours that the men are compelled to be on duty. Many complaints are coming in going so far as to ask, "For God's sake can't Congress do something to relieve us from those long hours?" You tie us down with compulsory investigation and place it in the hands of any appointed commission, and those hardships are going to continue, in my opinion, for all time to come. Men to-day are held on duty to exceed the 16-hour limit; some of them and thousands of them to 15 hours and 55 to 57 minutes. They are at a terminal not their own; not the terminal that they started to deliver that train, but they are caught out at another station and they ask to be relieved and allowed to take a passenger train to their own terminal when another crew relieves them. Are they permitted? No, Mr. Chairman and gentlemen, they are not. They are instructed to go back into the dog house and sleep there the best way they can.

The CHAIRMAN. What is the dog house?

Mr. McNAMARA. The caboose. It is nothing more nor less. That is the term that the railroad men have placed on it. When you put a crew—an engineer, one fireman, a conductor, and two trainmen—in there you pack them in there the same as you would in any dog house.

These are the conditions that have brought the men to make the claim for shorter working periods. There is no railroad division in this country to-day that you are not able to get your trains over at a speed basis of  $12\frac{1}{2}$  miles an hour within a period of 12 hours. It has been explained to you here by Mr. Doak from a practical viewpoint that each and every train can be gotten over a division of 150 miles on a  $12\frac{1}{2}$ -mile speed basis. But letters are received even at the present time stating where, at Kansas City, the 16-hour law has caught the engineer, fireman, conductor, and trainmen 15 miles from

the terminal they department from. Can you wonder at those men asking for shorter hours and better speed basis?

The CHAIRMAN. Mr. McNamara, can you give us any information as to what proportion of the roads are so arranged with reference to double tracks and sidetracks and the necessary switches and turn-outs to enable them to run their freight trains at the rate of  $12\frac{1}{2}$  miles an hour, or a hundred miles in eight hours?

Mr. McNAMARA. No, I have not got that; but the Interstate Commerce Commission is in position to furnish a map of all sidings.

The CHAIRMAN. As I understand it, there are many roads so well constructed and equipped with reference to double tracks, sidetracks, etc., as to easily permit them to run a hundred miles in eight hours. I refer to freight trains. There are roads that are so constructed and equipped, are there not?

Mr. McNAMARA. I will answer the question in this way: It is not on the single track roads that the 16-hour laws are violated. It is where they have got the storage tracks, as they call them, on the four and six-track roads.

The CHAIRMAN. Storage tracks?

Mr. McNAMARA. Yes; nothing more nor less, and if the public to-day knew or realized that the  $12\frac{1}{2}$ -mile speed basis would be beneficial to them in getting their products over the road to the market, they would be with the railroad men, and I believe that many of the public are favorable to it. On a single track road, where there are many sidings, or only a few sidings, the 16-hour law is not violated to any great extent. But where you have four and six-track roads—right here, coming into your own terminal to-day, there are several crews that are doing nothing, but relieving men; the 16-hour law catches them between here and Wilmington, Del. Is that a single track road? Does it require any sidings? No. Those are the roads that are violating the 16-hour law.

The CHAIRMAN. It is the roads of large traffic, then, and many tracks, that you say are causing the difficulty?

Mr. McNAMARA. Oh, no; it is not the large traffic; it is the heavy tonnage. It is the overloading of locomotives. When a locomotive is rated to haul 10,000 tons of freight, and at that rating which the mechanical men of that road know that she can get over the road with, at a rate of  $12\frac{1}{2}$  or 15 miles an hour, when you put 15,000 tons of freight behind that locomotive they are unable to travel 3 miles an hour. There is where it is. The railroads of this country, particularly the large trunk lines, have gone tonnage crazy, just the same as they went speed crazy here a short time ago. Take men who are working those long hours, meeting passenger trains on single tracks, getting out of their way from one track to another, there is a great danger in it. The men realize it, and the officers of the Brotherhoods realize it.

Senator POMERENE. Mr. McNamara, have you any data showing the capacity of these engines and the tonnage which is hauled by each of these engines so as to make specific the point you are now calling our attention to?

Mr. McNAMARA. Not with me here, Senator, but it can be produced.

Senator POMERENE. Your illustration was this: That if the capacity of the engine was 10,000 tons and it was loaded with 15,000 tons, of course that was going to materially interfere with the speed rate.

Of course, we all concede that. Now, I would like to know to what extent that is so—if you have any figures showing that.

Mr. McNAMARA. Why, yes; they can be produced.

Senator POMERENE. I would be obliged to you if you would furnish them for the record.

Mr. McNAMARA. All right; we will do the best we can to furnish them.

(The data referred to was not submitted at the time of printing this hearing.)

Senator TOWNSEND. Right in that connection, Mr. McNamara, I understood you to say that it would be for the benefit of the public to have the tonnage lessened and that your contention, if adopted by the railroads, would not be more expensive to the railroads in the end. Am I correct about that?

Mr. McNAMARA. There would be no more expense at the present time in so far as salaries and rates of pay are concerned.

Senator TOWNSEND. Then, what I want to ask you is: Why do the railroads oppose this?

Mr. McNAMARA. I do not know that I could say that many of the managers and many of the presidents of the railroads are strenuously opposing it; that is, strenuously opposing the eight-hour or 12½-mile speed basis. There are other things back of it, Senator, that there is no proof of. But they have got instructions from others that there must be so much revenue coming in, and they have got to comply with what the master hand tells them to do. There are many of the general managers to-day, if reports are true, who are favorable to this 12½-mile speed basis and a shorter work-day for the men; but the master hand has said to them, "No."

Senator TOWNSEND. Who is the master hand?

Mr. McNAMARA. Wall Street. They are the ones that at the present time control this situation that we have here.

Senator TOWNSEND. How do they control it?

Mr. McNAMARA. By giving instructions to those under them that under no consideration will the men in engine and train service be relieved from any of the arduous duties that are now imposed upon them.

Senator TOWNSEND. Do I understand you, then, to say that Wall Street practically owns the railroads?

Mr. McNAMARA. They control them. I do not say that Wall Street owns them all, but they control the destiny of those railroads. Do you mean to tell me, Senator, that those men who are holding the positions of general managers and presidents of the railroads are violating the laws that you gentlemen make here of their own will?

Senator TOWNSEND. What I would like to know is—because I am perfectly ignorant on that proposition that you are suggesting now—how does Wall Street and why does Wall Street control this situation?

Mr. McNAMARA. I am not going into that question, Senator. I can not answer you why they do.

Senator POINDEXTER. They control it by controlling the finances of the roads; that is what you mean, is it not?

Mr. McNAMARA. Oh, that is what is meant right along. That is what I meant—the finances of the road.

Senator BRANDEGEE. Mr. McNamara, would you let me ask you one question right there with relation to your statement that they wish shorter hours? Do I understand that you would like to see it made unlawful to work more than eight hours a day on a train?

Mr. McNAMARA. Senator, to make it unlawful to exceed eight hours a day on some traffic would discommode not only the traveling public but the railroads to such an extent at this time that a law like that would be or may be detrimental.

Senator BRANDEGEE. Yes; but irrespective of whether it would discommode the public or not, what is the desire of the brotherhoods on that subject, if you know? Is there any number of hours that the brotherhoods would like to have Congress say it shall be unlawful for the railroad company to exceed in the employment of their men? Do the men really want to be prohibited from working more than 8 hours or more than 10 hours a day?

Mr. McNAMARA. As previously stated—mind you, we are not workers that work by the day; we are pieceworkers.

Senator BRANDEGEE. I understand.

Mr. McNAMARA. We work by the mile.

Senator BRANDEGEE. I understand that; and, therefore, working by the mile, or having a double standard, what would you like to have prescribed as the number of hours which a railway employee might be employed on a moving train?

Mr. McNAMARA. On moving trains it should be far less than the 16-hour limit.

Senator BRANDEGEE. I mean to say this: Do the brotherhoods, the big four brotherhoods, want Congress to attempt to prescribe by law that it shall be unlawful for the railroad companies to employ any of their members more than so many hours a day?

Mr. McNAMARA. No.

Senator BRANDEGEE. You do not want any limitation put upon it, do you?

Mr. McNAMARA. We do not want Congress to place any limitation on the hours that the men would want to work, for the reason that we believe that it would be impossible or impracticable in certain cases to apply a limited hour. In other cases, such as yard service and what we call transfer service, the men are very anxious to have the eight-hour day.

We have never asked for a flat eight-hour day in road service. If it could be consistent to get the men over the road in 150 mile divisions in eight hours, the men would much prefer it. We are asking for a 12½-mile speed basis, which will get them over the road on a 150-mile division in 12 hours. But if the division is 100 miles long and you get them in in eight hours, that is what the men want. Therefore, where it is consistent they want the eight-hour day. Where it may be inconsistent they are willing to haul the freight trains over the road at a 12½-mile speed basis on divisions of 125 miles in 10 hours, 150 miles in 12 hours; and there are but very, very few divisions, if any, in the railroads of this country, for freight traffic, that exceed 150 miles.

Senator POMERENE. Mr. McNamara, I want to pursue the thought that Senator Brandegee developed a little while ago. You certainly would not advise the removal of the 16-hour limitation?

Mr. McNAMARA. Personally I would. I have no authority at this time, Senator, to speak for the men that I am representing on that; but personally, and from my practical experience with the 16-hour law, even before it went into effect, I know the condition that my frame was in after I worked 28 and 50 hours on the railroad, on the deck of the locomotive. It is not safe for you or your family to have me on the engine that is hauling the train that you are on, or to have a man on a locomotive that is meeting me, running in the opposite direction, for any great period of time.

Senator POMERENE. You do not need to argue that question with me. I concede that point very fully. But here is a limitation of 16 hours under the Federal statute now, and the query has been in my mind, why should that limit be so high? And now you have suggested here that you would not have any limit at all.

Mr. McNAMARA. Oh, no; I am not arguing that point. I am arguing the point below that limit.

Senator POMERENE. I mean the limit in point of law.

Senator TOWNSEND. He did not understand; he wants it less than 16. He does not want to remove that limit.

Senator POINDEXTER. He said he did.

Senator POMERENE. I am glad to have that cleared up, because I could not think that you would want to remove that limitation.

Mr. McNAMARA. Oh, no.

Senator POMERENE. That is, you would make it lower, if possible?

Mr. McNAMARA. I am trying to make it clear. You know an Irishman has always got two chances, and I am going to try the second chance. [Laughter.] I say that where it is or could be put into effect, the men do want the eight-hour day, such as in yard service, transfer service, etc. They want to work no more than the eight hours. Where they can get over the road of a 150-mile division in eight hours they will be satisfied with it; they will accept it. Where they can not get over the road of a division of 150 miles in eight hours they will accept—and that is what they are asking for—the minimum of 12½ miles per hour speed basis.

Senator POMERENE. Mr. McNamara, this is a point that I want your view upon specifically. As a general proposition you favor the eight-hour law. I think we all realize that it would be wholly impracticable to have a hard and fast eight-hour limit in the railway service.

Mr. McNAMARA. In road service.

Senator POMERENE. That is what I mean, in road service.

Mr. McNAMARA. I will agree with you.

Senator POMERENE. That is, I mean in the way of a criminal penalty. Now, what limit would you advise placing upon the number of hours which the trainmen could be compelled to work?

Mr. McNAMARA. I have just made a statement, Senator, that there are very few freight divisions in the railroads of this country that exceed 150 miles. The men are willing to go on the 12½-mile speed basis. Therefore, in accepting that, they are willing to work 12 hours to get over that division of 150 miles. If the division is 125 miles, they say that the limit should be 10 hours. They are not asking for overtime, but where it gets into overtime, on account of



the overloading, and such as that, then they did ask for a penalization of time and a half for anything exceeding the 12½-mile speed basis.

Senator POMERENE. I understand that fully. Now, I can put the question in another form, to which, I think, you can give me a specific answer. Would you advise making that limit of 16 hours, 14, 12, or 10, or decrease that 10-hour limit in any respect, so far as the criminal statute is concerned?

Mr. McNAMARA. Personally speaking, Senator, I would.

Senator POMERENE. Where would you put it?

Mr. McNAMARA. Not to exceed 12 hours, personally.

Senator POMERENE. That answers the question I had in mind. I want your view about it.

Mr. McNAMARA. But I have no authority to speak for the organizations that I am representing at this time on that question. You gentlemen were so charitable that, when that question was up here, you extended your charity to such an extent that you said that the railroad men must work 16 hours, and to-day they are working them 15 hours and 59 minutes. That is never reported to the Interstate Commerce Commission at all. The records and reports on the hours of service show you the many thousands of violations of that charity that was extended to the railroad men at that time of 16 hours, but there is no record of the hundreds of thousands of the 15 hours and 50 minutes and up to 15 hours and 59 minutes—no record whatsoever.

Now, gentlemen, I have tried to at least explain a part of what the railroad men want in so far as hours of service are concerned; and they have proven, they have tried to demonstrate to you, that they did not want those long hours by attempting to place a penalization on the railroad corporations for running them to exceed a certain number of hours. They found, as I have previously stated, that it was impracticable to cut off in the middle of a division; and, therefore, they did not ask for eight hours on road service, but they did ask for eight hours where it could be made applicable in yard service, transfer service, and such service as that.

I have listened to some of the gentlemen, who have spoken here, in connection with strikes that they found after their return to this country from abroad, and I have listened to them branding the men in engine and train service as murderers. Gentlemen, many of you—all of you, I believe—have personal acquaintance with the railroad men of this country, and I hope that there is no member of this committee that will pay any attention to such statements as that. For there is no more loyal lot of men—loyal to themselves, loyal to the Government, and loyal to their families—than the men in the engine and train service.

Now, in so far as passing legislation to the effect that they will have to be drafted in time of war, I am not going to dwell upon that, further than to say that in so far as the members of our organizations are concerned there is no necessity for such a law for there is not one of them, nor one of their families, even though they are not in the railroad service, that will not flock to this flag that we are living under. But they may not want to go beyond the border. Their loyalty has been proven, and when statements have been made here and placed in the record that they are to be classed as murder-

ers, and as disloyal to any form of government, I want to go on record that such is not the case.

Gentlemen, it has been stated here that many cases have been settled through mediation and arbitration. Many cases have been settled without appealing for mediation or arbitration; and we are unalterably opposed to any compulsory investigation—leaving out the compulsory arbitration end of it. When you take away from the workingman that right of collective bargaining, you take away from him the only thing that he has left; and it is through that collective bargaining and the manner in which it is conducted, that there has been a great deal of peace in the industrial world in this country.

We are not men who come in to-day and say that such and such ought to be the case. We sit down and discuss those matters with the officials of those railroads. Last November, after the adjournment of Congress, I was on two railroads taking up cases that had been in controversy since 1912. Are we radical? I have handled cases last year, in trying to put in the application of the award that had been granted in 1912. Were there strikes? No.

We do not want that collective bargaining to be interfered with. We do not want the right to strike taken away from us when all other fruit fails, for it is the only weapon that we have got. There is no use in denying—I am not trying to deny—that strikes or threatened strikes are sometimes forced upon us. In 1913 I handled the Bangor & Aroostook matter. The president of that road would not deal with me other than to listen to what I wanted to take up, and then declined to discuss the matter with me. I appealed for mediation. The mediators came there, and he declined to mediate. I appealed for arbitration, and the president of that railroad declined to arbitrate. This was joined with the engineers. Mr. Griffing, assistant grand chief of the engineers, was in there. Knowing the working conditions that were in existence on that road, the men said, "We are not going to work under such conditions." We advised with the men, and said to them, "It is folly for you to strike on this property; don't do it. We advise you not to do it." They said, "We are better off without those jobs, and unless you permit a strike vote to go out here we will resign or strike ourselves." We feel, gentlemen, that it is much better for men to be controlled than uncontrolled, and after we had taken the matter up with Grand Chief Stone and President Carter, and outlined to them the conditions of the men and the feeling that was existing among the men, they agreed to have the strike ballot put out. We embodied in that strike ballot, as we do in every other strike ballot, every letter that was written, the replies to same, the attempts to meet the officials, and our success or failure. The local chairmen went out, and they got a 100 per cent strike vote. We then again, which we always do, tried to get a meeting with the officers of that road, without avail. The men were granted, or allowed, to go on strike.

During the time that all this was going on Mr. Green, from one of the Pinkerton detective agencies in Boston, had flooded that road with strike breakers, or what we commonly call "scabs," and he had men in there that never ran a locomotive, never ran a train, never saw a railroad any more than a tramp, except to ride over it between

the bumpers, many of them, and to-day you can see the conditions of that road.

Why should you try to take away from us the right that we have got for collective bargaining and place our destiny in the hands of any appointed commission and compel us to live up to that law when others are not compelled to live up to the laws that are made to govern them? Gentlemen, I trust that such will not be the case. The workingmen of this country are good, law-abiding citizens. Those who are members of labor organizations are taught to be good, law-abiding citizens, and there is no member of those organizations who is going to commit any deeds of violence. It is those who are not members or who are hired by others to do so. It is a very rare thing to find a member of those organizations who does unlawful acts. The members of our brotherhoods—and it is a part of our law that in case a strike is permitted to be called on any railroad that they are duty bound to leave that property and not return anywhere within the bounds of the railroad property until there is a settlement made. As a rule, they do it; but, like the Pittsburgh district down here, in 1911, the men went out, not our men, not the trainmen, but other men went out on a strike. There were men forced in there or brought in there, and it is an actual fact, gentlemen, that the men who were brought in there to break the strike of the shopmen went among the men in the engine and train service and tried to persuade them to go out on a sympathetic strike and violate not only the train laws but possibly violate the laws of the State and the Nation. And when the men declined to do it, through the advice of the grand lodge officers who went in there, those “bulls,” as we call them, and who are in the constant employment of the Pennsylvania Railroad at all times, went over and tried to shut up that yard until the men raised a protest and said to us, “Unless this thing is stopped and no more shots fired in this yard, we will have to protect ourselves by resigning.”

Those are the conditions, gentlemen, that possibly do not get to you very often, if at all. We have laws, and our men live strictly up to those laws. Leave us now with that power, if you please. We have no complaint, but take it away from the working men of this country, and I fear that they will not be as good, law-abiding citizens in the future as they have been in the past.

It was stated here yesterday by Mr. Doak that there would be nothing, not very much, to this last controversy, if it was not the manner in which the public was fooled by the press of this country. Some years ago I have heard it stated that such men as Vanderbilt and Gould made a statement in connection with the public. They found that it did not fit very well. They made up their minds that they would get into the P. T. Barnum & Bailey tactics, and they have started an advertising department, and if reports are true, which I believe, and many believe with me, there was any where from one million to five million dollars spent on that campaign of advertising. The public got worked up over the misstatements that had been made, and one of the misstatements that was made in particular was that the officers of those organizations refused arbitration. Why, they never agreed on what to arbitrate, never agreed on what to arbitrate. If they did, I doubt whether the officers who were handling this would arbitrate. But the public got worked up

on misstatements that had been made, and they were wondering whether it was a white elephant or a woolly horse, and they did sure play the Barnum & Bailey game. They fooled the public, and they got the public to believe—that is, some of the public, not all, for there are several hundred thousand men and women that compose the public of this great Nation that never believed many of the things or any of the things that were published in connection with that movement.

Therefore, gentlemen, I trust and believe that there are many of you here who did not believe the statements, and those of you who have made a study of the practical end of railroading, the manner in which things have been conducted in the past, did not believe the statements that were made in the press of this country and paid for. We know. We tried to get into the press, to lay our case before the public. We did not have enough money. Oh, no. We got into a few papers, and we had to pay pretty dear for an advertisement to put in there, pretty dear, and taking what we had to pay and the little space that we got in those few papers and comparing it with the printed matter that has been in the papers of this country, and the magazines and the editorials that they had, we figure that it cost anywhere from a million to four million dollars to fool the public of this country.

Senator TOWNSEND. Mr. McNamara, before you quit, may I ask if you would be satisfied with the law that was passed in August, without any further legislation?

Mr. McNAMARA. I do not know what the law means.

Senator TOWNSEND. Well, that is what I am asking you—if you would be satisfied with it as it is or do you want Congress to enact some other legislation?

Mr. McNAMARA. Senator, we do not want Congress to enact any legislation in connection with our rights of pay or working conditions. We want the right of collective bargaining, and we do not want that freedom taken away from us.

Senator TOWNSEND. Well, does the law, as passed in August, satisfy you and the men?

Mr. McNAMARA. Evidently all the executives, through and by instructions of the 600 chairmen, directly representing the men in the engine and train service in this country, agreed to set aside for the time being the request that was made for punitive overtime, for time and a half, until such time as an investigation would be conducted by an appointed commission, which I understand has been appointed, but with no chance to go to work, and that the eight-hour day and the 12½-mile speed basis would be put in effect on January 1, 1917, and remain in effect for a period of eight or nine months, until the investigation and report of such investigation could be made. The men have agreed to that. What later came after that I do not know. But here we are to-day with one commission investigating one thing, the railroads declining to comply with what you gentlemen have said and done, and they have taken it into the Supreme Court to decide certain questions, and it is liable to remain in the Supreme Court for years to come.

There is a question of placing the rates of pay and working conditions in the hands of a commission. I know by the press, if it is correct, that a question has been asked by the Supreme Court if

Congress could give the Interstate Commerce Commission the right to regulate wages and work for the men in engine and train service, and brighter legal lights than I am, for I do not know anything about law, stated that they doubted whether Congress could give them that power.

Senator TOWNSEND. Would you be satisfied if Congress had that power to do that thing?

Mr. McNAMARA. No, sir; we are not satisfied with Congress in any manner tying us down with anything compulsory, or placing our destinies in the hands of any appointed commission.

Senator TOWNSEND. Let me ask you, if you can answer it more directly, what do you want Congress to do?

Mr. McNAMARA. We are not asking Congress to do anything. We have never come in here. Gentlemen, there is one thing that the public has had impressed upon their minds. There is not a paper in this country that did not go out and say to those that were unable to get to Washington that we came in here and held Congress up at the point of a revolver. I want to say to you, and you gentlemen know, that such was not the case. Those executives and the other representatives of the men were invited here to Washington by the Chief Executive of this Nation. He made a proposition to them and, like good American citizens, they accepted it and gave up the punitive overtime, which the railroads claimed would cost them \$100,000,000 a year. They gave it up. They did not ask the President to go to Congress and have a law enacted. Oh, no. And all of you in whom we have placed all the confidence in the world—there is none of the other representatives here, Mr. Wills, Mr. Doak, Mr. Clark, or McNamara, their legal representatives, who came to you and asked you to put that bill through, and still the press of this country told the people of the country that we were in here in numbers, holding a revolver up to the heads of the Senators and Congressmen here, demanding that that law be enacted. No; we deny such. We deny such. They gratefully and gracefully accepted what you gentlemen gave them. Have the others done so? No. But now we are opposing any further legislation to tie the hands of the workmen of this country, until you gentlemen find a law and a way to compel those whom you have already passed laws for to put them into effect.

The CHAIRMAN. Mr. McNamara, we gave Mr. Gompers to understand that he would be heard this morning, and I would suggest to the members of the committee that it would be well to hear Mr. Gompers now, and if they wish to question Mr. McNamara further later on he can be called before us.

Mr. McNAMARA. Mr. Chairman, I am only too willing to give way to Mr. Gompers, and I am in Washington all during the session of Congress, and if at any time this committee desires to cross-question me, or ask me any questions, in connection with the affairs and the workings of the brotherhood that I have the honor to represent, ours is an open book, and we will give you our constitution; we will give you everything else. Our books are open to any committee or commission which you may appoint, and there is no juggling in there whatsoever, either in our laws or in our manner of applying the same.

The CHAIRMAN. Mr. Gompers, the committee would be glad to hear from you.

United States, as the representative of the Nation, requested the railroad men to come to Washington for conference. As a result of that conference, all of the 640 representative railroad men, in their respective divisions, who had been in the New York conference, were asked to go to Washington for a personal conference with President Wilson in the White House. The railway managers, and later the railroad presidents, were also asked to confer with the President. As a result of these conferences the President recommended that the eight-hour workday should be conceded as a right that ought not to be arbitrated, but that all other issues involved should be submitted for investigation and arbitration.

In taking this position in regard to the eight-hour workday neither President Wilson nor the railway brotherhoods rejected the principle of arbitration, as the railroad presidents have wrongfully claimed. They took the position that the eight-hour day was a principle not subject to arbitration. In this they were in harmony with that demand by all the most ardent advocates of arbitration, of conceding that there are certain fundamental rights that are not arbitrable or not justiciable. When an industrial matter is the subject of dispute, all personal relations must be excluded from the purview of arbitration. Those matters are arbitrable which concern property and property rights.

When the railroad presidents refused to agree to President Wilson's suggestions, they left the railroad men no alternative but to strike, unless they intended to concede the whole case and to confess thereby that they were wrong in making their demands. It was then the strike order (previously decided by the men themselves) was issued. After the strike order was issued, President Wilson, in a joint session of both Houses of Congress, presented the following program which he thought necessary to deal with the situation:

"First. The immediate passage by the Senate of a bill, which has already passed the House of Representatives, reorganizing the Interstate Commerce Commission and enlarging its powers.

"Second. The enactment of an eight-hour-day law for all railroad operatives on trains engaged in interstate commerce.

"Third. The establishment of a commission, appointed by the President, to investigate and report upon the working of the eight-hour-day system.

"Fourth. Explicit approval by Congress of any increase made in freight rates by the Interstate Commerce Commission which is rendered necessary by the adoption of the eight-hour-day law.

"Fifth. A provision making illegal any railroad strike or lockout prior to the investigation of the merits of the case.

"Sixth. Provision for the Government to take any necessary action to keep trains running that may be needed for military purposes."

The two essential features of the President's legislative proposals were the eight-hour workday and compulsory governmental institutions to regulate industrial relations in an occupation not owned or operated by the Government itself. The representatives of the railroad organizations felt the seriousness of the situation which confronted them. The proposal to establish compulsory institutions is a matter that involves and affects the interests of all of the wage earners in the country. It is a revolutionary proposition, totally out of harmony with our prevailing institutions and out of harmony with our philosophy of government. The representatives of the railroad brotherhoods asked for a conference with the representative men of the American Federation of Labor, then in Washington. This conference was the first held in the American Federation of Labor new office building. Its importance is evident. In that conference the railroad brotherhoods were again assured of the support and the cooperation of the American Federation of Labor in their struggle, and in the hearing which took place before the Senate Committee on Interstate Commerce August 31 upon the legislation which President Wilson had recommended for enactment by Congress the wishes and the demands of the wage earners were presented by the representatives of the railroad organizations and by the president of the American Federation of Labor. The eight-hour workday was secured for the railroad men, but the proposition providing for "compulsory investigation," carrying with it compulsory service, was not enacted.

The bill introduced in Congress for the declared purpose of preventing strikes and interruption of transportation is modeled after the Canadian compulsory investigations act. It provides that during a period when the demands for changed conditions are under consideration it would be unlawful for the railroad workers to strike. During this specified period it is the purpose of this law to compel railroad men to work even against their will.

This effort to again subject wage earners to involuntary servitude has aroused the determined resistance of wage earners generally. To their declarations against involuntary servitude the proponents of the legislation have replied that although a strike would be made illegal under the proposed law and strikers criminals, yet individual workers were not deprived of the right to quit work.

This is a curious kind of reasoning, that may make an appeal to those who have no definite knowledge of industrial conditions, but wage earners know that individuals have ceased to exist from the standpoint of modern industry. The individual worker is a mere cog in industrial machinery, without voice in determining conditions that affect his work or his relations with his employer, and for an individual to quit work would have no effect at all, except to leave him without employment. The individual worker has neither the power nor the opportunity to secure redress for his industrial wrongs or to establish justice.

It is only through organized effort that wage earners have the rights and opportunities of individuals or have any hope to establish better industrial conditions and standards of industrial justice. It is pure sophistry that only augments the sense of justice that wage earners may feel for industrial wrongs to allow them by law the right of individuals to quit work and to declare that they can not agree with fellow workers, that conditions are so bad that their only hope of justice and fair dealing lies in agreeing together to quit work; that is, to refuse to perform their usual tasks—to strike.

The distinction between slaves and freemen is that slaves must work as their owners will. They have no will of their own which they can enforce. Freemen are masters and owners of their own labor power. They can not be compelled to work against their will. The exercise of their right not to give service is at their own peril; that is, loss of wages, with what they may entail.

Such a law providing for making criminals of men who cease work during the period of compulsory investigation of industrial disputes would not prevent strikes. It would only make strikes illegal and strikers criminals. It would revive again the old conspiracy laws.

The only protection that wage earners have is the right to withhold their labor power—the right to strike. To deprive them of this protection in the name of industrial peace would only result in increasing their feeling of injustice and converting governmental agencies and institutions into agencies that bind them powerless against employers, however rapacious and inhumane.

Compulsory institutions to prevent strikes are not new. They have been tried in other countries and found wanting. New Zealand established compulsory arbitration in 1894, after the close of a maritime strike that practically stopped transportation on the island. The compulsory-arbitration law was a desperate effort to protect the so-called public.

But strikes have not been abolished in New Zealand; many bitterly fought strikes have occurred. It was only last year that another general strike occurred, again tying up transportation agencies. This strike was characterized by the most cruel and brutal conduct on the part of the so-called public. Many farmers joined gunmen, gangsters, and professional strike breakers, armed themselves with pitchforks and other agricultural implements, and marched against the striking workmen.

Compulsory institutions either in the form of arbitration or wages boards have been established in all of the States of Australia and for the Commonwealth, but in none of the States or in the Commonwealth have strikes been abolished, or is there any reason to feel that this principle has solved the industrial problem.

The wage earners of the United States will oppose any proposition to impose upon them compulsory institutions which disguise involuntary servitude. They hold that the principle involved in voluntary institutions is the key to personal and industrial freedom, and that this principle is of more importance to them than any other consideration.

The immediate problem involved is a class problem; but the principle involved in compulsory institutions, even for a class in our Republic, is of concern to the whole Republic, for we know that the Republic can not be maintained part free and part slave.

Involuntary and compulsory labor once enforced, even for a single hour, will not halt at its temporary enforcement, but will go on and become permanent.

In human institutions, when a wrongful course has been pursued, it inevitably is held or driven on to its logical conclusion of error. There, then, is no retrieving except by a convulsion brought about by a revolution.

The human-labor power which this law compels wage earners to give to employers against their will is inseparable from the body and the personality of the wage earners. It is part of the men and women themselves. They can not be forced to work for an employer against their wills without reducing them to the legal condition of slaves and transforming their minds and spirits into those of slaves. No more dangerous proposition has ever been proposed than this compulsory-investigation measure.

Problems of industrial justice and redress for industrial wrongs can not be worked out by laws. Human relationships are involved and these can be adjusted on a basis of equity only through cooperation and mutual consent. Neither employers nor wage earners can be forced by law to a state of mind and cooperation necessary for the protection of the rights and interests of the human element in production, transportation, and distribution.

The institutions for achieving industrial justice and industrial freedom must be agencies that permit of the freest and best development of the people, for the establishment of justice and freedom come only through the growth and development of right thinking and right living so that opportunities for freedom and justice are used for the best interests of all.

In only one State of the Republic has there been a law providing for compulsory investigation of industrial disputes. That law was enacted in Colorado in 1915, and has been discussed in the following issues of the American Federationist: October, 1915; December, 1915; June, 1916; October, 1916.

As a result of their experiences under this law the trades-unionists of Colorado in their convention held at Colorado Springs in August, 1916, declared emphatically against the law by practically unanimous vote—that is, with only one dissenting vote—and have pledged themselves to work for the repeal of the law.

It should be our aim to aid our fellow-workers of Colorado in their laudable purpose.

The action taken by the Colorado trade-unionists in August is identical with that taken by the Canadian trade-unionists in their last Trades and Labor Congress held in September, 1916.

For many years those who were personally affected by the operation of the Canadian law have denounced the principle upon which it was based, but the opinion never became general enough in Canada to become the demand of the organized labor movement until the Canadian law had been extended by an administrative act to apply to a greatly increased number of workers in Canada.

The experience of the workers during the past year under the extended application of the Lemieux Act resulted in a practically unanimous demand on the part of the Dominion Congress that the law be repealed.

This action of the Canadian trade-unionists is dealt with in the report of the secretary of the Canadian Trades and Labor Congress which is in the appendix to this report.

We recommend that this convention take an unequivocal position against compulsory institutions and in favor of the maintenance of institutions and opportunities for freedom.

Mr. GOMPERS. That report was referred to the committee on resolutions of the convention. I ought to have said that that report comes under the heading of "The railroad brotherhoods' strike."

The committee reported as follows upon that portion of the report of the executive council, under the above caption, on pages 78 to 81. The committee on resolutions reported as follows:

The subject matter is thoroughly and comprehensively set forth in the report of the executive council, and its accompanying recommendation is so clearly pronounced as to the position of the American Federation of Labor on the question of compulsory institutions that no doubt of any description whatever is left. Your committee therefore recommends concurrence.

A motion was made and seconded to adopt the report of the committee, which, after discussion, was adopted by unanimous vote.



In the same convention a delegate from the Journeyman Tailors' Union of America, having come recently from Denver, Colo., where he had been a charge of a situation, a contention between the journeyman tailors and the employers of the journeyman tailors, where they had experienced months and months of long drawn-out investigations and procrastinations, introduced a series of preambles and resolutions denouncing the Colorado compulsory-investigation act, demanding and asking that the convention indorse his proposition in so far as it applied to Colorado. The resolution, as is every proposition coming before our convention, was referred to a committee for the purpose of considering it and reporting upon it; and I may say this, gentlemen, that in the conventions of the American Federation of Labor every resolution introduced must be disposed of in some way or another. It can not be killed in committee. Every man who has an idea and makes it as a contribution to the better understanding of that cause which we have the honor to represent has the right to have his day in court and to be heard. In the conventions of the American Federation of Labor the delegate representing the smallest organization of workers has the right to contribute his thought by offering a resolution and having it considered by a committee and by the convention.

That resolution was referred to a committee, which, after considering it, so changed the resolution as to apply not only to Colorado but to every legislative body in all America. And in that form the resolution was adopted by the convention by unanimous vote.

I ask that I may have the opportunity of incorporating these preambles and resolutions adopted by the convention. It is about half a page of printed matter.

The CHAIRMAN. Please hand them to the reporter, and they will be inserted, Mr. Gompers.

(The matter referred to is here printed in full, as follows:)

Whereas certain employers of labor and other dominating influences of Colorado, having failed to destroy labor unions by direct action, have resorted to a subterfuge of administering proclaimed justice and equity under a recently established law for enforced investigation of labor disputes at the hands of an industrial commission appointed by a governor servile to the employers of the State; and

Whereas said law establishes involuntary servitude of the workers during the hearing of industrial disputes and until the cases are finally disposed of, and is so worded that it can be stretched or shrunk at the whim or bias of the commission. The commissioners can hear a case promptly and speedily dispose of it, or they can delay it without limit of time if they or the influences back of them so desire; and

Whereas they can hear workers in public and investigate employers in private and keep secret the private evidence from the workers involved and from the public. They can hold workers in involuntary servitude, with the threat of a jail sentence, while employers can get ready to defeat the workers' demands.

Whereas to allow such laws to stand on the statute books, or to be adopted by other States, or to allow our Federal Government to enact such a law in principle, or in fact, or for us to approve of commissions appointed by political officials under the influence of employers without a protest, would be error and negligence on our part, and dangerous to our liberty as guaranteed under the Federal Constitution. And to allow the payment of large salaries to commissions for the suppression of labor's legal and natural rights to continue or to spread without a protest would be construed by the public in general, and those who make, or who may make, such laws, an acquiescence of labor in the principle involved, and of labor's willingness to be held in involuntary servitude, and to abide by decisions of commissions that may be biased, or those who may not understand labor's cause or its necessities: Therefore be it

*Resolved*, That men individually or collectively have a right to stop work any day or any time in a free democracy, and that their right is natural, legal, inalienable, and never should be surrendered; and that laws that violate this right are hereby denounced as reactionary, unconstitutional, and dangerous to the stability of democratic government: Therefore be it

*Resolved*, That this convention calls upon all labor unions, central bodies and State federations affiliated with the American Federation of Labor, and its executive council, to do all with their power to have repealed any or all such laws that may exist in the several States, and to watch vigilantly and oppose the further enactment of such laws by our Commonwealths, or by our Federal Government, to the end that the workers may have the same freedom as have other citizens of this Nation.

Mr. GOMPERS. I would like to address myself to the fundamental principles of this pending legislation, and yet, before doing so, I think that I ought to have the opportunity of saying a word in connection with some observations which I took the greatest of interest in hearing. I refer to the statements made by the Rev. Mr. Crafts some day last week. For a general statement of misunderstanding, Mr. Crafts takes the cake. He evidently had, according to his own story, the fortune of running into strikes wherever he went. Perhaps it might be an anticipated contagion. Now, nobody wants to inconvenience Dr. Crafts, but he, like every other mortal man, must at times be required to suffer inconvenience. His wonderful source of misinformation in the countries that he visited is remarkable. He went even to Australia, and there he found this wonderful place of peace and tranquility.

I would like you gentlemen to read a statement made by Mr. Beauchamp, in a recent address made before a board of business men in New York, which was reported in the New York Times of the day following. Mr. Beauchamp is not a labor agitator. He is a banker. Mr. Beauchamp mentioned, and it has been corroborated by statements made since, that in a strike—in a strike, mark you—there was a pitched battle between unarmed strikers and bankers and bank clerks and farmers and strike breakers and gunmen, with guns and pitchforks. The late Henry D. Lloyd visited the Australian countries, and he, too, splendid and big-hearted man as he was, was hypnotized. He went through those countries under the influence of hypnotism, and Mr. Lloyd came back and wrote a beautiful book, *A Country Without Strikes*, and ever since there have been strikes going on in the country without strikes.

But, of course, the Rev. Dr. Crafts could not see them. He could only see them in America.

I hold in my hand a copy of the official publication of the United Mine Workers of America, the December issue of 1916, and I ask that a letter which appears on page 10 of that issue be incorporated in the record. Permit me to read its caption and the first sentence:

Huge coal strike in Australia.

Every mine in Australian Commonwealth out on strike; grand object lesson of solidarity.

And then follows in parentheses:

Special to the United Mine Workers' Journal, by W. Francis Ahern, Box 2471, G. P. O., Sydney, New South Wales, Australia.

And here follows the opening sentence:

Every mine in the Commonwealth of Australia answered the call during the first week of November for a general strike.

Senator POINDEXTER. What year was that?

Mr. GOMPERS. This is within two months.

Dr. CRAFTS. They are backsliding.

Mr. GOMPERS. No; Dr. Crafts, it is your lack of understanding of human nature. This letter published shows that 100 per cent of all the miners in Australia quit work and went on strike in this country without strikes, this Elysium, and I may say, too, that in the body of this correspondence, this letter is the further statement that the miners—this is so interesting, full of meat, full of interesting thought and action and statement of fact—that the miners were required under the eight-hour law of Australia, the eight-hour prevailing practice, to add to the working time three hours to get from the mouth of the pit to not only down in the mines by the shafts but in traversing to the various places where they had to perform their work. The employers demanded that the time should be reckoned when they reached in the mine the point and place where they were required to perform the work, and the miners said that the eight hours should begin when they reported for duty at the mouth of the mine. That was the contest and the point about it. And I want to call your attention to the fact that in this strike of every coal miner of Australia they have offered to do the work to fit the ships that may be necessary in order to perform their duties to the Government and to themselves in this hour of stress and storm and war.

I ask at this point, Mr. Chairman and gentlemen, that this article may be incorporated in the record. I am sure you will find it exceedingly interesting.

The CHAIRMAN. Hand it to the reporter, Mr. Gompers.

(The article referred to is here printed in full, as follows:)

HUGE COAL STRIKE IN AUSTRALIA—EVERY MINE IN AUSTRALIAN COMMONWEALTH  
OUT ON STRIKE—GRAND OBJECT LESSON OF SOLIDARITY.

[Special to the United Mine Workers Journal, by W. Francis Ahern, Box 2471, G. P. O., Sydney, New South Wales, Australia.]

Every mine in the Commonwealth of Australia answered the call, during the first week of November, for a general strike. Not one over the whole length and breadth of Australia refused the call when it was made. If ever there was an object lesson required as regards trades-union solidarity Australia has furnished that example. Every mine employee has come out and is determined to stay out till his demands are granted. The strike has been brought about owing to the coal barons of Australia refusing to grant the men the "eight hours bank-to-bank." While the miners interpret this to mean the time from the first man down till the last man up from the mine, the coal owners interpret it, as usual, in a different way—from the last man down to the first man up. As will be seen, especially by readers of this journal, there is a radical difference between the two positions.

This strike promises to be the greatest ever in Australia, and for the purpose of getting accurate information for this journal I have made it my business to personally hike through the great coal-belt localities of New South Wales, where the strike first started, and gain authentic particulars, since I recognize the coal owners, through their American agents, will lose no time in giving their side of the matter and thus creating a false idea.

To fully understand the bank-to-bank question as it obtains in Australia it is necessary to say that in many of the older pits it takes a miner a full hour to reach the working face from the bottom of the shaft. With the time taken in lowering and raising the men and in going to and returning from the working faces, etc., about three hours is lost. When you consider that the owners require the men to work eight full hours underground it will be seen that this is in reality an 11-hour work day. The men say they would be content to work but five hours underground and lose the extra money rather than suffer the

privations of working a full eight hours at the coal face. As in other places, the men are paid tonnage rates; that is, by results (no coal, no pay), so it will be seen that it is not a question of more money that is affecting the miners of Australia to-day. They demand, in all, that the law of eight hours be observed in reality as well as in spirit.

The matter is of long standing and, owing to it having been sidetracked by the owners, the men have lost all patience with them and have now decided that they will not go back to work until their demands are granted in full. When the miners last met the owners on the matter of increased rates and shorter hours the owners granted the extra money asked (as detailed in the United Mine Workers Journal of September 7 last), but the hours question was not settled, though the owners gave the men to understand that it would be granted within a week or two. This was also distinctly understood by the arbitration court, which court did not register the wage agreement pending the settlement of hours. But since the owners have not granted the shorter hours the result is the strike.

Early this year the men came out on strike over this very matter and were only induced to return to work on the understanding that their demands would be met by the owners not later than March last. But the owners did not concede the shortened hours, neither was the arbitration court in a position to compel them at that date. A further application of shorter hours was made when the case of higher rates was heard in July last (as detailed), but with no results. Then the owners, since the wage agreement was not registered (pending the hours settlement), commenced to refuse to pay men the increased wages granted by the arbitration court, with the result that some of them stopped work. When this came about the arbitration court refused to take up the case until the men went back to work, but they had had enough of it and had resolved that, come what might, they would stand out till the matter was finally settled one way or the other.

Unable to stand the pin pricks any longer the miners' federation gave the requisite fourteen days' notice, under the law, for a general strike, which the owners did not think worth taking notice of. They then issued notices for the general strike. The men have not technically broken the law, and that is the reason why the government has not stepped in. They have formally finished their contract to work by giving the fourteen days' notice, and they say that they start work afresh only under the new conditions. The call to strike was first made in New South Wales, and within twenty-four hours every mine had stopped. During the next couple of days the call was made to the other Australian states, and to a man they came out. To-day every mine in Australia has ceased operations and not a single ounce of coal is being raised. It is a general lesson for the solidarity of labor in Australia, and proves up to the hilt the virtues of big unionism.

There is, of course, another aspect to the matter, and that is the failure of compulsory arbitration. The underlying principle of that law was that there should be, during the hearing of a dispute, continuity of industry. But when there was a genuine case to be heard, the court finds itself impotent to deal with it. In vain the Commonwealth Government called in its powers under the war-precautions act to enforce the working of the mines till the dispute was heard, but all to no purpose. It, too, proved impotent, and to-day we have the arbitration court standing idly by and the men out on strike, and the latter fully determined to get all their demands granted before they go to work again. The reason for this is that by a system of close unionism the owners can not find a single "scab" worker to go in the mines. Australia is, I believe, the only country in the world that has no scab coal miners. We never had one in the country. If we did, he'd be rushed to the museum and kept safely on exhibit.

There is now some talk of the government stepping in and working the mines as national industries, but whether this will be done is not fact yet. At any rate it is asserted that they would do so by granting the men their demands. This the men would desire, because they feel sure they could demonstrate to the owners that the mines could be worked profitably on the shorter hours, which the owners deny to-day.

Matters are reaching a serious crisis at time of writing. All industrial life is being shortened and is closing down. Considerably more than 100,000 men are out of work, owing to the dispute, the miners having struck at a time when there was a real shortage of coal. The only industries the miners say they will aid in by way of shifting coal from the coal stacks is the hospitals

and such like matters. And to dispel any illusion of hampering the government in a military sense in the loading of the transports for war purposes, the miners have offered and are now working to shift coal from stacks to load the transports with coal, and have offered to work in the mines under government control, if coal is needed for war purposes. It is thought that the government will take over the mines temporarily (they have so far commandeered all the coal in Australia), and if they do this, I predict the miners will win a great victory, because the government will see the justice of their case and compel the owners to give in to the men.

**Mr. GOMPERS.** I can not help taking interest in the statement made, not because Mr. Crafts made it, but because there is such a general opinion prevailing that the railroad men, the 400,000 of them, represent but 5 per cent of the people, and the other 95 per cent of the people ought to have the right of consideration. Let me say that when you talk about 400,000 men, it does not mean simply 400,000 as a part of a population, as percentages. It does mean, taking a man's average life—the American man—I do not know about your American millionaires, but the American workman has at least five in a family, so that, as a matter of fact, it ought to be considered two millions.

**Dr. CRAFTS.** Yes.

**Mr. GOMPERS.** You never thought of that?

**Dr. CRAFTS.** Oh, yes.

**Mr. GOMPERS.** You never said it.

**Dr. CRAFTS.** It is still 5 per cent less.

**Mr. GOMPERS.** Mr. Crafts and the gentlemen who believe with him, and he is only a type, imagine that the working people of this country are disinterested in the movement of the workmen to secure a shorter workday, and increased wages. The fact of the matter is that the convention of the American Federation of Labor, representing the organized workers of this country, fresh from the workshops and in touch with the men and women of toil, unanimously declared their absolute fealty and loyalty to the brotherhoods, the railroad men, in their effort to secure the shorter workday and better conditions. The answer may be made that you have but three millions of men, that the brotherhoods, with their nearly half a million men, all, is only three and a half millions, and that would be, counting five to a family, from twelve to fourteen or more millions.

But if any man will undertake to find out for himself, he will find that whether the worker is organized or not, organized, that 95 per cent, or larger per cent are with the railroad brotherhoods in their effort to secure the shorter workday.

**The CHAIRMAN.** Mr. Gompers, we are adjourning at 12 o'clock now. Would it be convenient for you to continue this at 2 o'clock, in the other office in the Capitol?

**Mr. GOMPERS.** At the other office?

**The CHAIRMAN.** At the other office in the Capitol. Would it be convenient for you to continue at 2 o'clock?

**Mr. GOMPERS.** I will be at the committee room.

**The CHAIRMAN.** Then the committee will adjourn.

(Whereupon, at 12 o'clock, m., the committee adjourned at 2 o'clock, p. m.)

## AFTER RECESS.

At 2 o'clock p. m. the committee reassembled pursuant to the taking of the recess, Senator Francis G. Newlands (chairman) presiding.

**STATEMENT OF MR. SAMUEL GOMPERS—Resumed.**

Mr. GOMPERS. If my memory serves me right, I was considering just before the noonday recess the subject of the representation of the groups of people interested in the controversies between employers and employees, and I desired to call attention to the fact that there is not any movement made by any considerable group of workers for improved conditions but what will have its beneficial effects and results upon all the workers, and that whenever a considerable group resists, and thereby checks any deterioration in that condition, it acts as a buffer against the enforcement of poorer conditions upon the great body of workers; and, whether consciously or intuitively, the great mass of the working people understand that whether they are organized or unorganized.

In addition, in every community in which the working people live and are engaged in any considerable controversy the sympathy of the business men—not the men having large investments, but the regular, the ordinary business men, who have business relations with the man or the woman of the family, the closest personal relations and friendship exist—is with the workers when they are engaged in a controversy. Go to any community you please, and wherever there is a controversy between employers and employees and there is a cessation of work the business men are, not only from the business standpoint, but from the sympathetic standpoint, wholly in accord with the working people engaged in the controversy, and in any strike of which I have known within the long years of experience and close connection that I have had with the movements of the working people of our country I know of no one instance where business men have not been of great assistance to the men engaged in the strike and given them credit until the strike terminated.

I want to correct a statement which was made here and answered, I think, that when Mr. Roosevelt was President of the United States he appointed the Anthracite Coal Strike Commission and that that prevented the strike of the miners in the anthracite coal regions. Anyone at all familiar with the history of that movement knows that the strike was on many months before the coal-strike commission was created.

Another statement was that people regard the right to strike as legal when there is no contract for the performance of work or service. Personally, and officially representing the American labor movement as its president, I can say to you that there is no body of men which stands more unflinchingly and faithfully for the maintenance of agreements and contracts than the American Federation of Labor, our other affiliated organizations, and the brotherhoods. We have gone on record unequivocally upon that subject. But when anyone will assert that the law can or should interfere to enforce compulsory obedience to the terms of a contract for personal service,

we will dissent. Such a condition is not imposed upon any human being—the specific performance of personal service as contained in a contract. It is true that if workmen will, despite that general tendency, break a contract, they may be made amenable to the payment of damages for breach of contract, as is every human being, whether he be a builder or a manufacturer or a printer or what not. If either or all shall fail to perform the specific terms of the contract, they may be haled to the court and made to pay damages. The mere fact that they may be unable to respond in damages is not a reason that they can be compelled to perform the specific terms of service; and because a workman may be in such a position as not to be able to respond in damages for breach of contract to perform specific service is no reason that he can be compelled to perform the terms of service as contained in the contract.

Senator BRANDEGEE. The proposition under this bill, drawn in compliance with the recommendation of the President, is not exactly, as I understand it, to enforce the specific terms of a contract. The brotherhoods have testified that these agreements made between the railroad companies and the employees are generally made to hold good for a year; so that after the expiration of the year they are at liberty to enter into a negotiation to make a new agreement. Assuming then that that contract has expired and there is no contract, they are simply working under the terms of the old agreement, without any contract to do so, until they can make a new contract. Now, the President's proposition, as I understand it, is that they shall not strike for a period of two or three months, and then for 30 days after the investigation and report of this committee to be appointed to investigate the subject. Do I state it according to your understanding of it?

Mr. GOMPERS. I think so. That is the status as I understand it.

Senator CUMMINS. But, Mr. Gompers, that is without regard to whether a contract exists or not. I do not believe that anybody has proposed that the law be changed so that men may be compelled to labor in pursuance of the terms of a contract.

Mr. GOMPERS. I am merely taking cognizance of that point, Senator, because I had heard it urged before this committee. It is not contemplated in the provisions of the bill before your committee.

Referring to the statement made by Senator Brandegee, let me say that so far as the agreements between the railroad brotherhoods and the railroad managers and presidents are concerned, I think I am safe in saying that within this past 30 years the brotherhoods have not violated one agreement they had with the railroad managers.

As to the agreements that the organizations of the working people have with employers, it is the purpose of our organizations, all of them, to see that they are faithfully and honestly and in spirit carried into effect and lived up to.

Senator BRANDEGEE. Now, where the parties, the railroad and its employees, differ among themselves, as I suppose they frequently do, as to the meaning and intent of many of the terms of these agreements, they are continually arbitrating those differences, are they not, among themselves?

Mr. GOMPERS. They are really not differences of interpretation. The differences of interpretation usually occur among the lawyers, not among employers and working people. It is the new conditions which arise and which must in some way be determined—new conditions not provided for in the agreement.

Senator BRANDEGEE. The reason I referred to that was that there had been testimony, if I am correct in my recollection, that even in the awards there were all the time differences of opinion as to what the awards meant and how they were to be construed, where they had arbitration.

Mr. GOMPERS. That is true when the so-called disinterested parties undertake to deal with a subject with which they are entirely unfamiliar.

Senator BRANDEGEE. They rarely have differences of opinion, then, about what the agreement means that the railroad has entered into with its employees, unless new conditions have arisen?

Mr. GOMPERS. Those are the only differences of that character. Differences of interpretation have arisen upon awards made by arbitrators.

The CHAIRMAN. Do you think that largely arises from the fact that the arbitrators are unfamiliar with the business and that they are unable to express themselves in a way that will be clearly intelligible to the two parties in controversy?

Mr. GOMPERS. Partly, and partly this—that they want to make an omelette without breaking an egg; dancing around and fiddling with the job without understanding or courage. It were better, when voluntary arbitration takes place, that an arbitration board should directly say to the men, "No," than to give what they do give, awards understandable by neither the men in the operation nor in the management of the concern. No better illustration can be given than that of the award of the arbitrators in the strike of the railroad men, or the demands of the railroad men, made in 1912; and I want to ask that I may have the privilege of having incorporated into the record a few articles and editorials that I have written upon these subjects as they have come up.

The CHAIRMAN. How many of them are there?

Mr. GOMPERS. At this time I want to present one. There are probably four or five.

The CHAIRMAN. And what is their length?

Mr. GOMPERS. In this one there are 14 pages of the American Federationist.

The CHAIRMAN. Would you wish to print it all, or are there simply parts of it that you would like printed?

Mr. GOMPERS. The article is under the caption "Compulsory arbitration in the railroad engineers' award," and appears in the January, 1913, issue of the American Federationist. I will submit that to you, gentlemen, for your disposition.

The CHAIRMAN. It will be incorporated in the record. You know, Mr. Gompers, sometimes the value of these hearings as publications is lost by reason of their length, and we are anxious to avoid too much of that.

Mr. GOMPERS. I understand that, Mr. Chairman. I have some realizing sense of that, and I try not to crowd anything in that I



do not think is necessary to the presentation of a fair understanding of our position on this subject.

(The article referred to is here printed in full, as follows.)

#### COMPULSORY ARBITRATION IN THE RAILROAD ENGINEERS' AWARD.

(By Samuel Gompers.)

The most important recent development in industrial affairs is the award of the special commission appointed to adjust the differences between the eastern railroad companies and their organized locomotive engineers. In addition to performing that duty the commission made a recommendation in comparison with which other issues dwindled into insignificance. This recommendation proposes compulsory arbitration to secure "permanent peace" between the railroads and their employees.

Everybody recognizes that peace is a desirable goal; that war is destructive and an interruption of progress. But in our zeal to reach this ideal let us beware lest we sacrifice justice and freedom to peace; lest we forget the ancient chains that held men in bondage. Peace under this fair-sounding name is not a nature to promote human welfare.

It is an unworthy desire that wants peace at any price, for we know that peace may follow the recognition of just claims and ideals, and "peace" may exist because men are shackled, powerless to protect themselves. Only peace with honor and freedom will be tolerated by men of nobler ideals. Compulsory arbitration means not peace of that sort, but peace at any price, any sacrifice of rights, liberty, and individuality, while the moral self grows flabby and soft.

Because of the importance of the board's recommendation, it behooves organized labor to study the award and the recommendation with greatest care.

The board making the report was selected to adjust difficulties arising out of specific wage demands. Last January the Brotherhood of Locomotive Engineers presented to the railroads a series of proposals involving uniform rates of pay, uniform classifications of service, and uniform working rules throughout the eastern division.

There are 52 railroads in the eastern division, comprising practically all roads east of Chicago and north of the Norfolk & Western Railroad. In 1910 these railroads operated more than one-fourth of the total mileage of American railroads, or over 66,000 miles of track. They carried about one-half of the freight traffic of the United States and more than two-fifths of the passengers. The companies in 1910 paid their engineers about \$38,000,000 in wages, or 41 per cent of the wages received by railroad engineers that year. The population of the region served by these railroads included more than 40 per cent of the total population of the United States. Approximately 30,000 engineers participated in the concerted movement to better their working conditions and to increase wages. From these figures the importance of the labor dispute becomes at once apparent. The interests involved were of tremendous magnitude.

The representatives of the engineers met those of the railroads in conference three times during the month of March. The railroads refused to grant the demands of the men in whole or in part, on the ground that they were financially unable to pay the wage increases. The engineers then took a strike vote by which 93 per cent of the men manifested their readiness to strike. At this crisis Judge Martin A. Knapp, head of the United States Commerce Court, and Charles P. Neill, United States Commissioner of Labor, intervened and urged that methods of peaceful mediation be tried before resorting to a strike. Their efforts resulted in securing the consent of Warren S. Stone, chief of the engineers, and J. C. Stuart, chairman of the conference committee of managers, to consult with them. Proposals of mediation were rejected, but eventually both parties agreed to submit their differences to a board of arbitration.

To serve on this board the engineers selected P. H. Morrissey, former grand master of the Brotherhood of Railroad Trainmen; the railroads selected Daniel Willard, president of the Baltimore & Ohio Railroad. The Chief Justice of the Supreme Court appointed the five other members of the board. They were Oscar S. Straus, of New York; Charles R. Van Hise, president of Wisconsin University; Albert Shaw, editor of the Review of Reviews; Frederick N. Judson, of St. Louis; and Otto M. Eidlitz, former president of the Building Trades Association of New York.

The board began its work in July and met from time to time for hearings and deliberations until the members were able to formulate findings. Grand Chief Stone conducted the case for the engineers; W. M. Duncan, receiver of the Wheeling & Lake Erie Railroad, and B. S. Worthington, now president of the Chicago & Alton Railroad, had charge of the interests of the railroads; statistical and documentary evidence was presented by both parties in substantiation of their claims.

The following are the principal requests formulated and presented by the engineers: The rates for passenger service to vary, according to the size of the engine, from \$4.40 to \$4.60 per day of 100 miles, with an overtime of 70 cents per hour after five hours. The rates for freight service to range from \$5.25, \$5.50, and \$5.75 per day of 100 miles, according to the size of the engine; \$7 a day to be paid to engineers running Mallet engines. The same rates to apply also to mine runs, work, wreck, pusher or helper, milk, and circus trains. Twenty-five cents additional to be paid for local train services. For switching service the engineers asked that \$4.50 be paid for a day of 10 hours; for belt service \$5 for a 10-hour day. In all cases engineers' time in road service to be computed as beginning 30 minutes before leaving roundhouse and ending when the engine was placed on a designated track or the engineer relieved by a hostler at the terminal. The engineers asked that electric engines used by the companies to be operated exclusively by steam engineers. A number of uniform working rules were presented for regulating service on several roads.

The engineers justified their request for increased wages by the following arguments: The nature of their services involved difficult and dangerous work, for which long years of training and preparation were necessary. The increasing size of engines used required corresponding increase of efficiency and skill and increased the productivity of the operating engineers. The heavy responsibility, the mental strain, the physical effects of their work shortened the life period of work. Wage compensation to engineers had not kept pace with increased productivity or higher cost of living, or with wages paid to other classes of labor. The extra duties and demands upon engineers before and after runs had been constantly increasing. Furthermore, wages on the roads in the eastern division were not as high proportionally as those on the roads of the southern and western divisions.

The railroads maintained that the wages paid engineers were not merely fair but liberal; that engineers were the highest paid men in the railroad service; that the hours of actual duty were carefully limited and working conditions were arranged to relieve the excessive strain and responsibility of their work. Moreover, they claimed that no material changes had been made in working conditions since the last readjustment of wages. Finally, they asserted that they were financially unable to pay the wage increases demanded.

These conflicting claims and statements placed upon the arbitration board the necessity of determining whether an increase in wages should be allowed and, if granted, how much for each class of service. These were difficult problems enough, bristling with technicalities and involving much research and investigation. Many engineers and prominent railroad officials were present at the hearings of the board to give testimony. Statistical tables and diagrams were presented. All of this mass of facts and detailed information was the basis for the deliberations and conclusions of the board. In considering the ability of the road to pay higher wages the investigations included the return to capital invested, the intercorporate relations of the railroads, their present earnings, their future probable earnings, and other complex factors. But even after all this the board felt unable to render a decision as to the ability of the roads to pay higher wages. This is an eloquent commentary on the financial methods of the companies and their ability to obscure real conditions. Disregarding any determination of that issue, the board declared that the railroads should pay a fair wage, and introduced the principle of the minimum wage for the entire eastern territory.

The board adopted this principle because it found the task of determining the compensation of every class of service upon each of the 52 roads impracticable. It decided to consider the facts relative to the existing relations between the wages paid to engineers and to other classes of service on the eastern roads, and to the engineers and other employees on roads in other divisions. The members of the board concluded that a general increase of wages on all the roads was not warranted, but that the compensation to certain classes of services paid by some of the roads was inadequate. Accordingly, a minimum wage for each class was worked out.

The board fixed the minimum wage for engineers in passenger service at \$4.25 for 100 miles or less, with an overtime rate of 50 cents an hour with an average speed of 20 miles per hour. For engineers in through freight service the minimum wage for 100 miles or less was fixed at \$4.75, with overtime prorata after 10 hours; 25 cents more a day was allowed in local freight service. For switching service, \$4.10 for a day of 10 hours or less was set as the minimum. The award states that all present rates higher than these minima shall continue in force.

The minimum rate established for passenger services is higher than the prevailing wages paid by the roads with the exception of a few. The minimum freight rate, \$4.75 a day, approaches the current minimum on roads with which now pay the best rates. The additional 25 cents accorded to those in local freight service mean a general increase in wages. A similar increase will follow from establishing 20 miles an hour as the basis for computing overtime in passenger service. The changes in the rules of services establish 20 miles an hour as the basis for computing overtime in passenger service. The changes in the rules of services establish conditions more favorable to the engineers than the present regulations on most of the roads.

In reply to the contention of the railroads that they were unable to pay higher wages, the board declared in their award that the engineers should be given a fair compensation for their labor. The award expressed a belief that most of the roads were able to pay fair wages. If there are any unable to pay such wages with the existing rates, the report recommended that they again open with the Interstate Commerce Commission the question of an increase in freight rates.

After finishing these terms of the award the board extended its own jurisdiction and took up what it pleased to term the "broader aspects" of the problem. It pointed out a new phase of development—that is, the concerted action of the engineers upon the 52 roads of the eastern division, and called attention to the fact that there had never been a strike on all the roads in any district; colossal interests were involved; the convenience and interests of the public are of greater importance than any other issue; the commission emphasized the wealth and size of the district concerned, and the number of people living therein; all these interests would be affected by a strike among the railroad engineers to secure fairer wages.

Evidently the very elements, strength, and solidarity, that made concerted action successful, are deemed just cause for restricting freedom of action among the engineers. It is only natural that the workmen should recognize in the suggestion to eliminate the strike, a method of exploiting them.

Since the interests of the public are paramount to all other factors concerned in a railroad strike, it is therefore imperative, the report affirms, that some other way than the strike be found to settle differences between the railroads and their employees. The merits of the Erdman Act and the Canadian industrial-disputes act were considered, but declared inadequate. There is a better way, the commission decided. Railroads are subject to the Interstate Commerce Commission and various State commissions, but their employees are not. Since the board of arbitration considered this a disparity of status it recommended the creation of Federal and State wage commissions which shall exercise functions regarding workers engaged in work upon public utilities, analogous to those exercised with regard to capital by the public-service commissions already in existence. The award concludes with this paragraph:

"It is well understood by the board that the problem for which the above plan is a suggested solution is a complex and difficult one. The suggestion, however, grows out of a profound conviction that the food and clothing of our people, the industries, and the general welfare of the Nation can not be permitted to depend upon the policies and the dictates of any particular group of men, whether employers or employees, nor upon the determination of a group of employers and employees combined. The public utilities of the Nation are of such fundamental importance to the whole people that their operation must not be interrupted, and means must be worked out which will guarantee this result."

The report was made by the five members of the board appointed by the Government officials and accepted by the representative of the railroads.

Mr. Morrissey, the representative of the engineers, dissented from the award of the board. He wrote an individual report in which he contends that the award of the board will have the effect of retarding the progress of arbitration in the settlement of industrial disputes in connection with railroads. The

award, he asserted, does not settle the important principles raised by the engineers and can be only temporary because it is based upon statistics that not only were unreliable for the purposes for which the board used them but also were wrongly applied. He dissented from the recommendation that wage commissions with power of compulsory arbitration be established, although such commissions might fittingly serve other functions. In view of the award just made Mr. Morrissey suggested that hereafter all arbitration boards shall be so constituted that no one group to the arbitration should have a majority of the board of arbitrators.

Mr. Morrissey's dissenting report concludes with this significant statement:

"I wish to emphasize my dissent from that recommendation of the board which in its effect virtually means compulsory arbitration for the railroads and their employees. Regardless of any probable constitutional prohibitions which might operate against it being adopted, it is wholly impracticable. The progress toward the settlement of disputes between the railways and their employees without recourse to industrial warfare has been marked. There is nothing under present conditions to prevent its continuance. It will never be perfect; but, even so, it will be immeasurably better than it would be under conditions such as the board propose. The peace that would satisfy such an ideal condition as that had in mind by those making the recommendation would be too dearly bought even if it could be attained. To insure the permanent industrial peace so much desired will require a broader statesmanship than that which would shackle the rights of a large group of our citizens."

To sum up, the principal labor contentions enunciated by the board of arbitration for the eastern railroads and their engineers are: (1) There are three parties interested in every industrial dispute—the employers, the employees, and the public; the interests of the last are paramount. (2) A fair wage should be paid to employees. (3) Capital and labor should be subject to the same regulations; hence Federal and State wage commissions, with compulsory power, should be established. Organized labor takes issue with the first and the second principles stated.

The "public" has traveled a long journey since the old days when the railroad kings lightly ignored their claims to consideration with "the public be damned" or "there's nothing to arbitrate" with labor. It would appear that when this long-suffering, just, and impartial public gains the controlling voice in the arbitration tribunals it is quite willing to consign other people to the condition previously allotted the public. It is a wise policy that yields absolutely to no agents control over liberty and justice. The great abstract something called the public is made up of individuals of fallible judgment, human impulses, with motives that may be selfish and acquisitive.

The five men who represented the public on this arbitration board regard labor (humans) as a material essential to the satisfaction of public needs and desires, and of the same nature with capital, to be regulated and restricted in the same way and degree. In order that the public may be fed, clothed, served without intermission and inconvenience labor—again we say humans—shall lay aside any claim to what it may consider its rights and peacefully accept what others may deem good for it.

In this award, with its suggestions purporting to be in the interests of the general welfare, is an illustration of what the working people are to expect from compulsory arbitration, it is little to be wondered at that workmen look upon the proposal with not only distrust but with aversion and antagonism.

An account by the Wall Street financial expert writer suggests that perhaps the motives back of compulsory arbitration are not altogether altruistic and humanitarian. It is in part:

"The report of the arbitration commission is regarded by railroads as a distinct victory. The increase in wages is not a high price to pay for the weapon of defense fashioned and placed in their hands—the proposition to create Federal and State wage commissions, with arbitrary powers to make and enforce terms of settlement of disputes. \* \* \*

"Organized labor has seen and felt this danger, and realizes that the report of the arbitration commission is an entering wedge to discussion and action on an issue it would like to delay or dodge. The issue is not a new one, but this is the first time the railroads have been able to get it before the law-making powers as an authorized expression of a body claiming to represent the public. The five outside commissioners felt a keen sense of the duty they owed the public in this investigation by refusing compensation for their five

months of service on the board, though they might as well have pocketed \$20,000 apiece. This action is added dignity and impressiveness to the finding.

"The report of the wage commission is at once a club and a wedge, and organized labor identified with the utilities systems will be slow to give employers a chance to invoke popular sympathy and cooperation for suppression of violent methods."

This suspicion is further increased by the reflection that the great mass of individuals which make up all of the public has been willing to put up with coal strikes, street-car strikes, railroad strikes, strikes affecting all manner of industries upon which it depends for supplies, and has not passed compulsory arbitration laws to protect its own interests.

It is argued that the establishment of Federal and State commissions for the regulation of wages will place "capital and labor on equality," which does not exist under the present interstate-commerce provisions. On the surface, that may seem a fair conclusion; but in reality it leaves out of consideration the fundamental and inherent difference between labor and capital, the relative influence of each, and how deep-seated and dominant are the self-interest motives.

It is now accepted as a fact that the bargaining power of the individual employee is far inferior to that of the employer.

Only by union of the individual has the weaker element been made strong enough to deal with the employer on an equal footing.

Back of the workers' collective demands and propositions has always been the only argument of any persuasive influence upon employers—power.

This reserve power is the right to strike.

In the business world of to-day the conflict of interests is so intense, the struggle for profits so keen and so vital that any factor not able to defend itself by power or influence that can enforce compliance need not anticipate a pleasant or a prolonged existence. If men of labor surrender their right to strike they will be in the business world as guileless sheep among the gray wolves. Such an action would place them in the same category with sheep, not only from the defensive aspect but also from the intellectual. Men are in business for profits. Hence, it is perfectly natural that employers should ever seek to entrench their own interests and grudgingly diminish their share.

Of late years the merging of employers' interests—the trust organization—has made it necessary for the Government to intervene for the protection of the public as consumers. It would be a far different matter for the Government to intervene again, but in the interest of the employers. That such would be the result of this proposal to establish compulsory arbitration is acknowledged—even the Wall Street interpreter admits that the plan is a club and wedge.

Once disarm the workers of their right to self-ownership, exploitation and some form of slavery will inevitably follow. Those who favor the plan claim that the awards of the arbitration tribunals will guarantee justice. This view is hopeful but not warranted.

Even the most ardent advocates of international arbitration accept certain matters as not justiciable. Any infringement upon those fundamental rights will be resisted by force by any nation. However much we may believe in the brotherhood of man and the compelling loftier influences of love, yet we do not abandon our police system. We know that men have nobler impulses and better selves; we know that these are increasingly asserting themselves; but we also know that removal of restraints upon the less worthy manifestations will not necessarily lead to the development of the higher. The strong arm of society lays hold upon those who offend. Men who, when robbed of their cloaks, meekly yielded up their coats also, would be compelled to seek a tropical clime. Men who can not or will not reinforce their right to individual consideration or justice contribute to the development of nonsocial traits in others. Labor would not be justified in anticipating justice as a result of yielding up its power of self-protection.

But the advocates of compulsory arbitration claim labor would be yielding no more by submitting to the awards of the Interstate Commerce Commission. There is a seeming analogy which will not bear close examination. In accepting regulations determined by the commission the railroads reduce the dividends paid upon a capitalization that bears no relation to actual investments, but has been created by many curious and questionable devices. Such regulations compel the furnishing to the public of better and more impartial service and rates. To be sure, the "right" of the company "to manage its own business" is restricted; excessive charges and large dividends are somewhat lim-

lited; but those are matters that never existed as just rights. Nor were they more than external possessions of the company, for the owners, the managers, the officers, still retain their own physical personal liberty and freedom. Should these wage commissions be established with compulsory power to fix wages and working conditions, to make their awards effective penalties for violation must follow. When wages, hours, or working conditions are decided, the workmen must give of their own physical power for the stipulated allotment. If their sense of injustice be so aroused that they strike, they will be fined or sent to jail, or both. Freedom of choice, personal liberty, is gone. These awards are dealing with matters inseparable for the living, pulsating human being. Compulsory arbitration is but another form of industrial bondage.

This supposes decisions in favor of the employers, and not impartial awards, the advocates object. But is any other hypothesis probable? Those compulsory arbitration commissions would be composed of representatives of the three parties—employers, employees, and the public. The employers are men of influence in the political, industrial, and financial circles. Their connections, their inside knowledge, give their opinions and demands a potential force that may be only a subtle, psychological influence or of a less refined nature. There is a prestige accorded to men who have places of control that secure for them consideration.

Then, too, with compulsory arbitration, the fact that all the great instrumentalities and channels of communication are under the control of the employing interests would still further emphasize the disparity in influence between the employers and the workers. The employers own the great public press and control their policy; control the telegraphs, the telephones, and the cables; control the gathering of information, its preparation, and editing, and thereby control the statement of facts and the presentation of conditions and causes actuating motives. By this power the press determines what the public shall know and what conclusions it shall deduce. With this condition of affairs how are the toilers to get their side of the story presented to the public? How are they to tell to the world the injustice and grievances that should be changed if humanity is to be accorded an equal chance?

Where, indeed, is protection accorded to workers equal to that accorded employers?

Labor shorn of its power would be a great inert, spineless mass, as likely to inspire respect and consideration as a jellyfish.

The third party, the public, is interested from the consumers' standpoint, and hence regarded as an impartial judge of the employers' and employees' claims. This third party, the consumers, is not always the absolute and unerring arbitrator depicted. It is chiefly interested in having its wants satisfied, its conveniences served. Although it may intellectually recognize wrongs and grant that they should be corrected, practical and financial influences will not infrequently overrule such convictions in favor of the apparently easiest solution of the difficulty, even if the results are but temporary, which means victory for the stronger. Such was the experience of the laundry workers of New York. Even though harrowing and revolting details connected with the cleansing of the city's dirty linen were vividly and specifically revealed to the public, the conscience of this impartial arbitrator remained dormant. The public failed to rise to expected heights.

After all, is the public disinterested? Do we not rather find it composed of different groups, some whose interests are similar to those of the employers involved, and who hence naturally sympathize with them and their positions? There are many whose financial welfare is identical with that of the employer, who are dependent upon his prosperity. There are many whose industrial experience as workmen would inevitably predispose them to approve the actions and demands of the employees upon any question. There are many selfish and indifferent to the normal and ethical values of any issue that conflicts with their own comfort. There are some few with broader sympathies and keener and deeper understanding of human nature, who try to maintain the dispassionate attitude of justice toward both, but upon some critical and vital issue can they completely overcome the formative, determining influences of environment, instruction, and the indefinable psychic influences of their own kind? It is a serious and dangerous matter to entrust the determination of issues which concern the life, the happiness, the welfare, and freedom of the workers into the hands of other men who do not and can not know the toilers' world in which they live, move, and have their being.

Government regulation has two classes of advocates: One hopes thereby to insure the welfare of the people, the other hopes to insure his own continuity of control. It is often hard for the average man to discern the first from the second, and frequently seekers for the commonweal are deluded into following false leaders and trying a remedy that is worse than the disease.

Government regulation is a remedy frequently suggested for all manner of political social, and economic evils, resulting from modern industrial chicanery and incompetency. It is not itself a universal good or evil; its application, or otherwise, must be determined by the individual character of the principles involved in the situation.

If the compulsory element is introduced and Government machinery is invoked in determining industrial disputes, then it devolves upon the Government to enforce any and all awards that thus become the law of the land, in order to protect the Government from contempt. Should the employer object to the decision and award he may go out of business, which may involve financial loss, or he may enter upon another business career; or if he violates the terms of the award, he can be held financially liable. But should the employees feel that an award and decision have been ever so grossly unfair and unjust, what recourse is open to them? To accept the award and sullenly work as slaves under conditions which are not only onerous to them, but enforced by all the powers of Government? Or rebel and go on an "illegal strike"? In the latter event, they may be all arrested, tried, and sentenced to fines or imprisonment. But supposing fines, how collect them? In lieu of means or willingness to pay fines, several thousand may be sent to jail. But how, all at one time, or in relay squads?

Decisions can not be enforced in the face of the united and determined resistance of the people to tyranny and in defense of freedom. You can not stop strikes by law; you can not, at least in the United States in this year of grace, enforce involuntary servitude upon unconvicted American citizen workmen. Even if strikes could be made illegal there would be no guarantee of industrial peace. A strike is not an aggressive act; it is not an affirmative act; it is negative. It is expressed by nonresistance. It is the state of doing nothing. It is expressed by men folding their arms or holding them to their sides, a refusal to expend their physical and mental powers in service for another. And so long as freedom in its faintest concept shall obtain in our country, so long as workmen, citizens of the United States, may claim the rights and the guarantees of the Constitution of the United States and of the Several States, they can not by law be forced to expend their labor power, which is part of their very life and being, in the service of another.

The enactment of compulsory arbitration is no remedy for strikers. This fact is proven wherever the effort has been made. All agree that strikes should be avoided whenever possible and every honorable effort made to avert them. But the very best evidence is afforded by the board of arbitration's award in the case under consideration—that strikes are more generally avoided and brought to a minimum in number when the workers are organized, capable of ascertaining and maintaining their rights, with the power and the right to strike, and yet submitting their cause, as they submitted this case, to an arbitration board the majority of whom were predisposed against them.

Even though the award in regard to wages, hours, and conditions of employment is not entirely satisfactory, it has been accepted and will be complied with by the men and the organization affected. But, as Mr. Morrissey, a member of the board, points out, the terms are unjust, inapplicable, and can not in any way be regarded as at all permanent. But be that as it may, the board of arbitrators in the case could well have afforded to have allowed its award upon the conditions of labor to stand without traveling far beyond the purpose for which it was called into existence and entering into a realm dangerously trespassing upon the rights of man and guaranteed American citizenship.

Would a compulsory arbitration law, with its provisions enforced by the Government, prove a deterrent to strikes? We think not. But even if it did, such a law would only repress the feeling of anger and resentment at unjust decisions until the repressed current would burst through all control, sweeping everything before it in the revulsion of feeling. The pages of the French Revolution afford example after example of cumulative revulsion resulting from tyranny and repression. As the Outlook truly observes: "Compulsory arbitration would promote rather than prevent labor wars unless it can be so framed as to secure the consent of the trainmen"—which is to say must be voluntary instead of compulsory.

As already stated, strikes should be avoided whenever possible, but is a strike essentially an evil? As Dr. Lynnan Abbott said, in discussing international arbitration treaties:

"What we should be especially interested in is not that this be a movement for peace, but that it be a movement for justice. Peace has its tragedies no less than war."

What the right of resistance to injustice is in the political world the right to strike, to cease work, is in the industrial.

A reserve power held in abeyance to be used only in the interests of justice when all other means have failed.

The right to strike must be retained if the workmen would retain the position of free men.

A strike, like any other power, is not to be used flippantly. It has been one of the most effective means with which the workers have fought their way to higher elevations. Workers have ever been the oppressed class; but slowly, steadily, they have forged their way upward from slavery to serfdom, from serfdom to freedom. Then as a free man they have fought to maintain the right to strike, to dispose of their working power as they deem best, to associate themselves together to promote their general welfare. Now come vested interests seeking again to reduce the workers to a condition in which they may be more readily exploited. The danger threatens in the form of governmental intervention and regulation of industrial relations through judicial machinery, and the jails. In the interests of industrial continuity the workers may not cease work when they please.

The toilers are to lose their defensive weapon. The Government directs that they shall unfold their arms and forces them to work. The workers are to return to the condition which prevailed under the old medieval conspiracy laws, when men were jailed, branded, or hanged on the charge that they had "robbed their employers of their labor." Strikes are to be made illegal.

Must it come that to regain freedom from slavery the workers must fight the Government? That for the purpose of preventing strikes and maintaining industry undisturbed compulsory arbitration must set unconstitutional limitations on the freedom of the great masses of the people? However much we may regret the economic loss, suffering an inconvenience attending strikes, there is involved that which is of greater moment. What should be the object of our endeavors is not a cure, not a palliative, not merely something that will stop industrial warfare and economic loss, but to understand and remedy the underlying conditions that result in injustice so that our changes may be really constructive. Industrial warfare will cease when the grievances of the wrongs and injustice to, the toilers no longer exist. Then the worker shall still remain a free man, retain his weapon of defense, cumbersome though it be.

"The crucial boundary line, the border between industry and democracy," does, indeed, need more light, more fair, open investigation and discussion, not the compulsory awards and decisions that would result from substituting Government regulation, control, and enforcement for voluntary action concerning personal relations on the part of free citizens.

How the principle operates in practice gives a line on its actual value and reveals whether the results promised are secured; that is, Are there no strikes? Is industrial progress uninterrupted? Has the industrial problem been solved and are the interests of labor and capital coordinated so that an era of good feeling and industrial peace is maintained? Have social justice and democracy been realized? Can law prevent strikes? Can compulsory arbitration affect industrial changes that will result in setting up machinery that will insure the employees a fair share of the product of their toil? The most extensive laboratories for experimentation in these questions are in Australia, Canada, and British South Africa.

For the first 12 years after the adoption of compulsory arbitration in Australia its advocates had many reasons for satisfaction. The grievances and the wrongs of the men were so obvious that no court could refuse them awards, so the workers were satisfied. As the adoption of the law coincided with the period of prosperity the employers did not seriously object to increased wages.

The high-tariff wall gave the employers additional protection. Their profits were further insured by the tendency toward standardization of production costs. Australia and New Zealand were usually spoken of as a workingman's paradise—the land of no strikes.

Beginning with 1901 dissatisfaction developed among the workers. This culminated in a long series of strikes beginning in 1906, when a strike occurred on



the tramways in Auckland; in 1907 there was a large strike among motormen and conductors in Auckland and the bakers of Wellington. The labor report for New Zealand for 1908 showed 23 strikes, affecting 2,389 men, and since then strikes have increased in number and in scope.

In February, 1907, the slaughterers demanded an increase in wages. The packers refused to grant this and referred the question to the arbitration court. **Knowing that the court would consume the most valuable time of the season in reaching a decision, which in the end would probably be unfavorable, the men struck illegally.** The four principal centers of the packing business were tied up. This desperate situation forced the employers to grant the increase. The court was in a dilemma for "the law must be upheld." They arrested the slaughterers and fined them \$25 each. It was a long and tedious process. Men were numerous and hard to identify. Those brought in were searched, but the \$25 was not forthcoming. The wheels of justice ground slowly. When summer was ended many unfined slaughterers had vanished. The law had been defied with impunity; it was impotent to prevent the strike and could not enforce the penalty for striking.

The necessity of enforcing the law prompted the Government to increase the penalties for its violation. In the future anyone who struck while a case was pending might be fined and in lieu of the fine his goods confiscated or the man himself imprisoned. Any labor union ordering a strike or permitting its members to strike must pay a fine. Then, lest the unions evade the law by withdrawing their registration, the fine for striking was extended to all trades supplying a utility or necessity, whether the trades were organized or not.

Strikes among the slaughtermen have been especially numerous in New Zealand, and for that reason are counted separately in the labor reports. In the year 1908-9 penalties were inflicted on workmen in 266 cases, the fines aggregating \$6,650, of which at the end of six months 58½ per cent remained unpaid.

In 1908, after having presented their grievances again and again, and receiving no answer except the dismissal of the men making the complaints, the miners struck. Preparatory to action they divided their union funds among the individual members to prevent their being levied on for fines. The employers invoked the new law. The household goods of the men were seized—cook stoves, sewing machines, and furniture, including articles owned by wives before marriage. The goods must be sold at public auction, but buyers there were none. Finally a smiling man offered \$1.25 for the whole lot, and got it. Before night the miners' goods had been returned to the miners' homes. Thus it was again plain the law could be defied with impunity. Enforcement of law depends on popular sentiment, or concept of justice.

Mere enactment of legislation is no remedy. Compulsion can not be extended beyond certain limits.

In West Australia there were many "unlawful" strikes and lockouts, but as a rule no attempt to enforce the prohibiting clause. The act broke down completely in 1907 in the sawmilling industry. Three thousand men were affected, but there was no attempt to enforce the unpalatable award.

In a mass meeting of the employers of Broken Hill Mine, of New South Wales, on October 18, 1908, the chairman declared:

"The idea of the new political union is to get an agreement and register. The bona fide unions in the Broken Hill Mine would have no voice in it. These irresponsibles would have the agreement made a general law. A strike is our only remedy. Wade's act says we shall go to jail if we strike, but no Government on earth would put the 6,000 men on the line of load in the Barriers in jail."

This chairman definitely voices the conviction that has been growing among the men, that the compulsory law was a political move and that the labor men had never controlled the political situation. As a result the workingmen had come to feel that they had no part in the system, and that whatever had been given them was only given to hold them in line quiescent that industry might be uninterrupted, but that freedom of action, the birthright of all free men, was yet far from their reach, tied up by absolute governmental control.

The exploited can not cherish good will toward those who use governmental control for their hurt. Compulsory arbitration did not emanate from the workers, but from the rural public, which was the controlling political force. They had always assumed a savage attitude toward strikers and made frequent use of the militia against them. The militia used in strikes was told to aim to "lay the strikers out." The police of Australia have used against

strikers a most brutal method found no place else, known as "frog marching." The arrested striker is seized by the feet by two policemen, then he is inverted and held with his head so close to the ground that he is forced to protect it as best he can by using his hands as feet, as he is escorted in that position to the jail.

Many investigators have tried to determine the value of Australian industrial legislation. Some of their opinions are as follows:

Paul Kellogg says:

"But it is not through fear of fine and certainly not through the martyrdom of imprisonment that men and women are to be led to agree with their masters. The new act will continue to succeed as a prevention of strikes in spite of its strike-prevention clauses rather than because of them."

Sidney Low, in the April Fortnightly, concludes:

"It would be rash to affirm that the Australian precedent has been sufficiently successful to call for hasty imitations by other and more complex communities."

Hugh H. Lusk, a most ardent advocate of the system, says:

"However anxiously I have looked around for some way in which the system of New Zealand could be applied here (the United States), I have been met by difficulties that seemed to me insuperable."

When the law of 1901 expired, New South Wales enacted the law of 1908, which practically abandoned compulsory arbitration. Wage boards were provided for the more important groups of industry. There was a clause enabling unorganized labor to appeal to the wage board for relief, but no such appeal has ever been made. Strikes and lockouts were made illegal under certain conditions only. Though a penal clause of the law was strengthened, it has not prevented large bodies of men from striking.

In 1902, 12,000 coal miners went on strike; 1,000 men were idle in other industries as a result. Then, in December, Parliament passed a coercive act giving the police power to break up any meeting for strike purposes, making the procedure more effective and increasing the severity of the penalties. In December, 1910, the Government secured the conviction of the president of the Colliery Employees' Association, sentencing him to one year at hard labor in prison. Three other leaders were given sentences of eight months, and others shorter terms.

A short time ago a published interview with J. S. Badger, an American who had been living in Brisbane for 16 years, indicated that compulsory arbitration had not resulted in the kind of feeling between employers and employees necessary to industrial peace, but rather alienation was increasing. He said:

"The question of getting labor and dealing with it, is a very serious one in Australia. The country has, perhaps, led in labor legislation, and all disputes between employers and employees are subject to arbitration. There is a Federal arbitration board, and in each State there are arbitration courts, or wage boards for each separate industry. These last have an equal membership of employers and employees, with an independent chairman, and they settle all details about maximum hours and minimum wages. Their decisions, when approved by a minister, and gazetted, have the force of laws, and severe penalties are provided for their infraction. These laws are enforced rigidly against the employer, but it has been found very difficult to enforce them against the employees. The whole history of this legislation has shown that you can readily get at an employer, and fine him, or worse, but if a large number of employees are dissatisfied, and decide to stop work, there is no way of making them take up their tools again. If you haul them up, they snap their fingers. If 10,000 men decide they won't work, it would be a little more than the Government could do to lock up the whole lot or attempt to fine them."

It will be remembered that in Brisbane, the "country without strikes," of which the late Henry D. Lloyd wrote, a general strike completely paralyzed all industry and commerce last spring. The causes of the strike were the refusal of the management to grant permission to street-railway employees to wear the metal badge of their union while at work, and the long delay in bringing the matter before the arbitration court. When finally the men did win a favorable decision from the arbitration court the employers appealed the case to the high court.

Compulsory arbitration can not guarantee industrial peace. If arbitration is followed by more harmonious conditions it must be arbitration sanctioned by the employees; that is to say, voluntary arbitration. Where there has been organization of the workers, voluntary arbitration has become the prevailing

custom in American industry. Why should we change to a method that has not secured as satisfactory results where tried?

In the light of such experience with compulsory arbitration, organized labor is justified in objecting to having any such legislation foisted upon it under the pretense and euphonious name of peace. Labor seeks justice, and peace will naturally follow—peace is a result, not a casual element. Labor deprecates all such suggestions introduced in the name of social welfare, but really serving as an entering wedge whereby the people may be beguiled into adopting a regulation prejudicial to the best interests of a great proportion of the population—the workers. Labor will oppose compulsory arbitration under any guise.

In the next issue we expect to discuss the Canadian compulsory investigation act.

Senator BRANDEGEE. You agree, then, as I understand you, with some of the other men who have testified here, that even where the railroad and its employees do submit a dispute to arbitration, it is much better that there should be no third party represented on the board of arbitrators, but that it should be composed of those who are or have been actually engaged in the operation of the trains and those who are or have been railroad managers?

Mr. GOMPERS. I would as lief, if the employers and employees can not come to an agreement on a disputed point, that they toss up a coin and let it go at that, as to leave it to a so-called disinterested third party. Or, if they can not agree, then let the break come and let them endeavor to reach an understanding and an agreement upon the new terms upon which the workmen will sell the only thing that they have, their labor power, and upon which the employers will buy it.

Senator CUMMINS. Mr. Gompers, I do not desire to change the course of your argument at all, but there is no proposal before us for arbitration or to change the law in any respect with regard to arbitration. Two things are proposed: First, a Government investigation in the event of a dispute; second, restraint—prohibition against striking during the period of that investigation; third, giving some Government tribunal, such as the Interstate Commerce Commission, the authority to fix wages and hours of labor and conditions of labor. Those are the things I would like to hear about.

Mr. GOMPERS. Senator Cummins, I will, if I will be permitted to, present my thoughts on that subject. It is true that there is no bill pending before this committee providing for compulsory arbitration, but the subject of compulsory investigation and the prohibition of a strike during that investigation is the entering wedge to compulsory arbitration. There is never any act of that character but what is followed by something else. Adopt a law for compulsory investigation and a prohibition of strikes during the investigation, and rely upon it in the effort to prevent strikes—that is, after all, the purpose, to prevent strikes—experience and the fact that strikes can not be prevented that way will lead to a further effort being made to strengthen the law—I use the word “strengthen” in quotation marks—“strengthen” the law to make strikes absolutely illegal.

Senator BRANDEGEE. Suppose there was no attempt in this bill to exercise any power to stay the strike pending the investigation. Do you, or does your organization, object to a law which would provide for a Government commission whose duty it would be to make its own investigation of the conditions of the dispute and publish its findings?

**MR. GOMPERS.** Senator, we want to make investigations of almost every conceivable subject, and one can not interpose objections to investigating anything that anybody desires to investigate. But success, in so far as the working people are concerned, may be predicated if the condition of the workers in that particular industry is one of absolute, abject poverty and misery, and then such a situation may appeal to the public mind, the public conscience, and the public judgment. But, take the workmen who are receiving what the world regards as rather fair compensation; whose lives are not lives of misery and degradation, but who, yet, as the result of their work, insist upon a larger reward and a better return, and, after all, it is they who form the vanguard for social progress and human understanding and better conditions for the great mass of the toilers of our country. They have to blaze the way, and they have to take the risks of loss of employment and of hunger during a strike. An investigation of the conditions, for instance, of the Bethlehem Steel Works brought a blush of shame to the people of our country that such conditions could prevail; but the investigation primarily disclosed misery and degradation among the men in the coal-mining industry. An investigation of the sweated industries of New York and Boston and Chicago and St. Louis would disclose the same. I may relate an incident that is apropos: About two years after the close of the anthracite coal strike I participated in a conference in New York where the subject matter of the enactment of the Canadian compulsory-investigation act was to be approved and submitted to Congress for enactment.

I made to a man who was a coal miner a statement which I shall repeat. He seemed to think that it was not a bad thing, or rather he thought that it might be a good thing. I called his attention to this: I said, "My friend, you have won this strike in the coal fields for two reasons—one, because the condition of the people appealed to the conscience of the American citizenship, and it appealed to the cooperation and sympathy and support of the working people of our country. That condition of misery and degradation has been removed in so far as its worst aspects are concerned, and you can't burn gunpowder the second time. You can't again get that sentiment." The result of investigations of the character suggested, if my inference is right, is to show to the masses of the people of the country that the conditions under which the specified people or groups of people work are so un-American in so far as standards are concerned that they ought to be changed; they must be changed; and the judgment of the commission is that they should be changed. But when it comes to the question of the \$2.50-a-day workman or the \$3-a-day workman or the \$4-a-day workman who aspires to better conditions for himself and his wife and his little ones, that same sympathy is not going to be aroused for him, in spite of the fact that his demand is just as justified. It is not going to have that effect. As a matter of fact, its influence would be a practical estoppel to the demands for improved conditions of the average or the better-paid workmen.

**SENATOR BRANDEGEE.** Suppose the commission, which we are discussing the wisdom of appointing, did not make any recommendation at all. What I am trying to ask you—and I do not quite clearly understand what your position would be about it yet—is this: Suppose,

when there was a dispute and the threat of a strike in interstate commerce on a railroad, that there was a standing commission always in existence whose duty it should be to inquire into the subject and publish the facts, publish what each side claimed, publish what the difference was, and the facts and conditions surrounding it, and stop there. The reason I ask you that is this: Mr. McNamara this morning expatiated at some length upon the way the railroads, through their command of financial resources, had exploited their claims and their side of the case last September when a strike was supposed to be impending. He showed at what a disadvantage the brotherhoods were in being unable to get their side before the country. It occurred to me that if there was a commission—a high-class commission—appointed by the President, composed of men who were familiar with the ordinary conditions of railroad operation, who in such a case would go upon the ground and find out the facts and make a report, and that should be published, it would not be possible to fool the country then; and I wondered whether your organization would oppose that kind of a commission.

Mr. GOMPERS. As I said, one would find himself in a difficult position to oppose a proposition of that kind; but I think, sir, that you are overestimating the beneficial results.

Senator BRANDEGEE. I am not estimating it at all. You are an expert witness here in this business, and I am just asking you how it strikes you and how it would strike the brotherhoods, and to give us your opinion about it.

Mr. GOMPERS. You will find, of course, that Congress could not undertake to supply every citizen in his home with a copy of that report. You would find that you would, after all, be required to depend upon publication elsewhere.

Senator BRANDEGEE. Certainly; but that would be in the law—that it should be published broadcast in the newspapers.

Mr. GOMPERS. In which papers?

Senator BRANDEGEE. As many newspapers as we should decide; newspapers all over the country, so as to give it general circulation and publicity.

Mr. GOMPERS. As an advertisement?

Senator BRANDEGEE. Paid for by the Government, and published in the leading papers all over the country, made a public document in both branches of Congress, etc.

Mr. GOMPERS. Of course, you know that the leading papers are all of them against us.

Senator BRANDEGEE. They could be hired to print the report of that commission, I think.

Mr. GOMPERS. Well, probably. I heard yesterday a statement made that the newspapers are even cutting down their advertisements, and requesting the advertisers to cut their advertisements down into smaller compass.

Senator BRANDEGEE. The Government would have enough money to get it in.

Mr. GOMPERS. The Government has enough money for everything except to pay the Government employees a little increase in their salaries. [Laughter.]

Senator BRANDEGEE. I am in favor of paying those increases. Well, I will not ask you anything more, Mr. Gompers. I did not

want to divert you from your argument. I did not know but that you had an opinion about that.

Mr. GOMPERS. I have an opinion about that. I anticipate no good from it at all. I can interpose no objection to it.

Senator CUMMINS. I have a question or two to ask you there. This investigation that is proposed, the publication of its report, relates, of course, to a particular dispute that has arisen between the men and their employers, and if it does any good at all it will be to either force the men to yield their demand or force the employers to comply with the demand. It is intended to bring the force of public opinion to compel either the men to give way or the employers to give way; is not that the purpose?

Mr. GOMPERS. That is the purpose; otherwise there is no purpose.

Senator CUMMINS. If that is the purpose, why should unorganized public opinion be relied upon to execute the finding of any such commission rather than organized public opinion through some instrument of government? That is what I can not understand.

Mr. GOMPERS. That which we call public opinion is made by the newspapers and the magazines; and all or nearly all of these newspapers and magazines are published by employers of labor.

Senator CUMMINS. But I was not speaking of the merit of it. I was speaking of the plan that is proposed—that in the one case public opinion is expected in some fashion or the other to compel either the employer or the employee to abandon his position. Now, if we rely upon public opinion to accomplish a purpose of that sort, in that unorganized, vague, and indefinite way, why should not we exert public opinion through the organized forms of government, and say to the employer or employee, "You must do so and so?"

Mr. GOMPERS. The unorganized public opinion, after all, may be evanescent, and it may change in 24 hours; or, if it does not, and the workers are defeated in any projected movement by reason of this expression of the unorganized public opinion, they may at some time in the future make a new movement in order to secure their demands and aspirations. On the other hand, the organized expression of public opinion, as I understand it, through a law or a governmental agency, as you stated it, Senator Cummins—if such a governmental agency shall authoritatively determine that the demands of the working people are unjustified, it puts the seal of disapproval upon the whole movement, and makes it practically impossible for a decade or more for the men and women of labor to give expression to their discontent in some form that shall make for the achievement of their demand and their ideal in that particular movement.

I doubt that there is any more loyal American citizen than I; that there is any man who is a greater lover of the institutions of our Republic than I, or who holds more steadfastly in his mind and spirit the hope and the thought for our Republic. But, with all the exalted opinion that I have of our system of government, I am afraid to intrust government with additional powers, and particularly with the power to determine the relations between employer and employee—the personal relations, usually good, usually making for the good, with an interruption sometimes occurring. And it is best that that interruption shall occur, for the establishment of new relations between the workers and their employers, so that there shall be again

the opportunity for development and improvement. I understand, of course, that inconveniences result, and that sometimes evils may come. I think that I am in entire accord with that great writer, Macaulay, when he said, "The remedy for the evils which come from newly acquired freedom is more freedom"—not less. It is something not yet fully understood, how perfectly safe freedom is.

SENATOR CUMMINS. I do not believe, Mr. Gompers, you caught the comparison that I was trying to institute. The proposal of a great many people is that when a dispute of this sort arises the Government should undertake to settle it, and to settle it through an investigation which will disclose the facts, possibly with the opinion of those who are appointed as commissioners or on the tribunal, and that then it is expected that public opinion having been brought to bear on the two sides of the dispute, the parties in controversy will yield to the public opinion, whatever it may be. Now, I, for one, think that public opinion is just as likely to be wrong as right, and that it is not a force that can be relied upon to settle disputes of this kind any more than could the voice of organized society through government be relied upon to settle disputes of this character. I was trying to put that comparison before you and to ask you what value an investigation of the immediate dispute would have in settling the controversy.

MR. GOMPERS. In my judgment it would have little, and what little it would have would be against the workers.

I have jotted down the evidences of the formation of public opinion. I take it not only from my everyday observation but from two periods in the dispute between railroads and their employees upon two questions—one, the full-crew laws. Then the legislatures of several States passed laws creating what is known as "the full crew for trains." There was a campaign inaugurated by the railroads for the repeal of these laws, and during the agitation created by the demand of the railroad brotherhoods for the establishment of the eight-hour workday in principle the same methods were employed. The avenues of information and transmission of information, as our telegraphs, are in the hands of the elements or group in society against the demands of the railroad men; against labor; they themselves, not only in view of the great financial interests involved, but as employers of labor.

The newspapers and the magazines are in the hands of financial interests, and the owners and the directors are employers of labor. An official publication of the report of a commission by an advertisement in the newspapers would necessarily be long and be read by few. What is regarded as the most important pronouncement coming from any Government officer is a message of the President of the United States, either his annual message or address or any special message or address; and yet I venture the assertion that I am within the limits of truth when I say that scarcely 20 per cent of the people will read it entirely, and particularly the messages which contain a varied number of subjects on the state and the good of the Union, with recommendations of the President. There are not 20 per cent of the people who read them. And now, if there should be a great, voluminous report published in the newspapers, how many people would read it? But, on the other hand, those who have opposite interests to the demands of the workers would immediately, in their

news columns and in their editorial columns, batter the thing to pieces and work against the contentions of the workers; and while the workers have only a few publications in which they are trying to reach some of their men—lamentably it is true, but still it is true—it is the daily and the weekly newspapers and the weekly and monthly magazines which make the public opinion.

In addition to that, I think I am right in assuming that the members of this committee have traveled considerably when time and opportunity afforded. During each of these campaigns of the railroads you could not get to a ticket office without encountering an appeal to the traveler, an appeal to anyone to protest against the demand of the railroad men—in the case of the full-crew bill asking the people to write to their legislators or to the governors to demand the repeal of the full-crew law; and all of it in paid advertisements in the papers and in the magazines. You could not go on the dining car of a train without seeing on one page of the bill of fare, or menu, as it is called, an argument against the contentions of the railroad men. The street cars in their advertising had signs and arguments against the contentions and demands of the men.

Senator BRANDEGEE. What inference do you draw from that, Mr. Gompers?

Mr. GOMPERS. The inference, sir, is that the public opinion, when it comes to the question of diverse interests between employer and employee, is manufactured in the interests of the employer.

Senator BRANDEGEE. Suppose the report of this committee of investigation that we are talking about showed that the workers were right in their contention; don't you think that the publication of that report would have a good effect toward compelling the railroads to yield to the just demands of the workers?

Mr. GOMPERS. No, sir; I think not.

Senator CUMMINS. I have thought possibly. Mr. Gompers, that on the matter of public opinion, if it is to be settled in that way, there ought to be a referendum, each individual voter to be allowed to express his opinion upon the merit of the controversy, and the majority to decide.

The CHAIRMAN. You mean a referendum of the workers?

Senator CUMMINS. A referendum of everybody.

Mr. GOMPERS. A referendum, with the public opinion created and formed through the processes and means and methods that I have indicated?

Senator CUMMINS. I would think that if you did that the usual plan would be followed, namely, that the Government would undertake to give each voter the facts in the matter. I am only suggesting that to indicate that there is but one way to get public opinion, and that is to vote upon it.

Mr. GOMPERS. I will just remind you, sir, of a fact with which we are all familiar—that in Missouri the full-crew proposition was submitted to a referendum, and because of the avenues of information controlled as I have stated, the referendum defeated the full crew proposition.

Senator BRANDEGEE. If the trouble originated in the District of Columbia, I do not believe you could get a referendum.

Senator CUMMINS. No; probably not.



**MR. GOMPERS.** In the District of Columbia there are men 60 years of age who would not know how to vote; who would not know what a ballot box looks like.

**SENATOR CUMMINS.** I am not advocating a referendum or anything of the sort, because I do not believe it is a part of the Government's business to settle these disputes; I am simply indicating how vague and indefinite and uncertain and unreliable public opinion may be as ordinarily exerted.

**MR. GOMPERS.** As ordinarily exerted. The voters may be fairly relied upon to cast an intelligent vote upon questions between one political party and another, upon a proposition for public welfare, upon a proposition of taxation, upon a proposition of acquiring lands, upon the question of waterways and waterworks, and gas and electricity, and bond issues, and all those things, by reason of the fact that newspapers and magazines will take diverse views upon those subjects. But in the question of the relations between employers and employees, you will find the newspapers and magazines, almost without a single exception, on the side opposed to the workers.

**SENATOR BRANDEGEE.** When you were speaking a little while ago, I understood you to say that in the investigations into the steel industry and into the coal-mining industry, the disclosure of those conditions revealed grave evils that ought to be corrected, and I supposed that you approved of the results of those investigations: did you not?

**MR. GOMPERS.** I did, sir.

**SENATOR BRANDEGEE.** They were all questions as to the conditions prevailing as between employers and employees?

**MR. GOMPERS.** But the fact is that at that time there was absolute and abject poverty and misery, almost degradation, among the workers in those two industries. That does not now exist, and the miners and the steel workers aspire to something better to-day, and may aspire to something better to-morrow or next year, and an investigation would not arouse that public interest and sympathy and help that the investigations did before.

There are so many of us—thank goodness, I am not one of them—who want to do everything by law, and make other people do things by law. Propositions have been submitted—they are not before this committee at this time, but they have been submitted to Congress and have been discussed in the newspapers—of compulsory arbitration and the prohibition of strikes, and when we are before a committee of Congress having the subject in its initial steps under consideration we can not escape the influence of it. I saw in the newspapers of about a week or 10 days ago, when it was suggested that the railroad men and the railroad managers come to a personal, private agreement for the adjustment of differences between them, that some member of Congress undertook to say—a good, splendid fellow after all: a fine, high-type of a man—that he was going to take both sides and spank them; take the railroad men and the railroad owners, and the presidents and managers, and spank them. Of course no one can escape the influence of what these words are intended to convey.

**SENATOR BRANDEGEE.** I am rather inclined to think that that was done when they passed the Adamson law. [Laughter.]

Mr. GOMPERS. No, sir; that was uttered in the newspapers, unmodified and unchallenged by the gentleman who was the author of the statement; and it has been supplemented by the introduction of bills looking to that purpose. I do not believe, however, that he will be able to spank us.

Senator CUMMINS. It would be a good deal of a spanker who could do that.

Mr. GOMPERS. Yes, sir. Our friend fails to understand that power is gravitating toward the economic development of this country and of the world; that it is the economic foundation of society that has its hope and its basis for the future.

The CHAIRMAN. Mr. Gompers, as I understand it, you think that governmental investigation, even without the restraint of the power of strike, would not be beneficial in the formation of a sound public opinion. Is there any method by which we can inform both the operators of the roads and the workers of the facts involved in the controversy in such a way as to create a sound opinion among them, with a view to a just determination of the controversy? As it is, the statements made before us indicate that the officials of the railway brotherhoods, before asking for a strike vote, or at the time of asking for a strike vote, present to the men who are to vote a statement of the controversy, and to that statement is appended a blank vote which the voter or worker can sign, indicating whether he is for or against the strike? Now, would it be possible to provide by law that that vote should be conducted in such a way as to assure not only fairness in the vote but the deliberation that is necessary to enable a man to vote intelligently; and would it be possible also to provide that there should be a brief statement made by both parties to the controversy, so that the voters can be informed as to the contentions of the employers, as well as of the representatives of the workers. I am told that some such system as that is pursued in Oregon with reference to the laws generally that are subjected to the referendum. Do you think it would be practicable or desirable to endeavor to control that in any way?

Mr. GOMPERS. It would not, sir. Let me say that in Oregon the questions that are to be submitted to the voters for a referendum—the proponents and opponents give a statement within a limited number of words to each voter—affect all the voters. The proposition affects all the voters, not any particular group of the citizenship.

Again, the workmen have not the right—and they do not seek it—to submit their propositions to the vote of the directors or general management of the railroad; and if they had the right, and asserted it, it could and would have no influence with them, particularly if they have had conferences before and have failed to come to an agreement. And why the vote of the membership of a group of citizens having like interests should be subject to a statement made by those who were opposed to them, I can not for the life of me conceive.

Then, again, we have the question of the accuracy of the vote. Well, I would as soon believe that I could be untrue to the memory of my mother as that these men would falsify the account of the voting.

I know, of course, that we do not like to be inconvenienced. We go along so splendidly and are so comfortable that anything that arises that is likely to disturb the ordinary routine makes us look askance, and we sometimes borrow a great deal of trouble when it is not necessary. The dangers ahead are always greater than those we really face. Gentlemen, after all, the thought underlying all this species of legislation is how in some form or other to tie the men of labor to their tasks; how there can be taken from them something of their new-found power to compel a respectful consideration of the demands they make upon their employers.

Senator BRANDEGEE. Let me ask you a question there: Suppose the Supreme Court declares the Adamson law to be unconstitutional, and we are left in the same situation that we were in before Congress enacted it, do you prefer that Congress should take no steps at all to pass any legislation for the purpose of preventing strikes on interstate railroads?

Mr. GOMPERS. Yes, sir.

Senator BRANDEGEE. You think it is better to leave it just as it was?

Mr. GOMPERS. I think so.

The CHAIRMAN. Do you also think it would be better for Congress to take no action whatever on the subject matter?

Mr. GOMPERS. I think so; yes, sir.

The CHAIRMAN. Now, right in that connection, Mr. Gompers, let me make this suggestion: We will assume, as I believe is the fact, or at all events we will assume it whether it is a fact or not, that the labor cost of the railroads is 50 per cent and the supply cost, including taxes, we will say, is 25 per cent, and the other 25 per cent is return upon the capital invested, and that the workers employed on that railway seek to increase the proportion which they receive from 50 per cent to 75 per cent, or, to make it more reasonable, 60 per cent. You realize that that extra 10 per cent will result in a reduction of the amount that is paid out for supplies, or it will result in a reduction in the amount paid as interest upon the capital invested, unless there is an increase of rates. Now, we will assume that the supplies are just as necessary as the labor: that they can not be reduced; and we will assume that the existing return upon the capital is just as necessary as the labor, because, unless there is a return given upon that capital, you can not expect new money to be invested in making the improvements and extensions of this great system that is engaged in the public service.

Now, if that is the case, there must be an increase of rates, must there not, in order to do justice as between all? And then the public come in, and they are subjected to an increased charge for freights and fares. This difference then goes on, and the employees say, "Unless you give us this 60 per cent instead of 50 per cent, we propose to take action that will paralyze the transportation of the country." Now, is not that a question in which the public, the general public, has an interest; and is it not necessary for the Government to guard that interest, to look into the question, and see what it can do to avert a calamity that will be prejudicial to the interests of all the people, though it may serve the purpose of a part of the people in getting what they want? That is my question.

Mr. GOMPERS. I have not seen, and I can not conceive, of workmen making demands upon their employers which are unreasonable or unjustified, and the case you mentioned, even in point, the 50 per cent of the gross receipts, assuming your figures to be accurate, in wages to labor; 25 per cent in supplies, up-keep—

The CHAIRMAN. And taxes.

Mr. GOMPERS. And 25 per cent in profit.

The CHAIRMAN. Return on the capital.

Mr. GOMPERS. Profit, the return on the capital invested, the demand for 60 per cent instead of 50 per cent, can not be taken out of supplies and up-keep; it must be taken out of profits; that is, if all things are equal and remain equal. But, as a matter of fact, the history of industry clearly demonstrates that with the increase of incomes to the workers we have greater efficiency of the workers on the one hand, and on the other the introduction of new methods and new devices and new machinery that makes the selling price, or the carrying price, or the operating cost, less than it was before.

I am not familiar with the technique of the railroad business, but in the statement made by President Carter, of the Brotherhood of Firemen and Enginemen, before this committee and in private conversation with me, he mentioned this fact, that if he has the opportunity to testify upon that subject, and that subject alone, he can demonstrate that the operating expense of the railroad, wages and hours, and upkeep have been reduced per ton, as a unit, by the railroads. Now, I am not in a position to prove that. Mr. Carter told me that he is. But of my knowledge of industry I know that to be a fact in every instance.

The CHAIRMAN. There is no question but that there has been a reduction in the cost.

Mr. GOMPERS. We are so apprehensive that there shall be some interruption to interstate commerce. I would not like to see it, and I hope that it can be averted. But there is such an apprehension that it is tremendous, and it has a colossal effect.

And I want to repeat this. I want to make some statement that I had in mind a few minutes ago. There is, after all, underlying it the thought and the hope of preventing the workers from acting in unison, and by which may come a stoppage or interruption of work. Now, this is the thought I wanted to express. For ages and ages the employers of the whole world were masters of all they surveyed. Their employees were their slaves and their serfs and their peons. Now they are employees, and all through this period government has always been on the side of the employer—the master, the baron—and now, by reason of the fact that the working people of the country and of the world are coming to a realizing sense of the fact that by their cooperation and concert of action they can get some relief at the hands of the employers the government again steps in to in some way prevent the exercise of that new intelligence and new understanding. My apprehension is this, gentlemen, that if this legislation, in its mildest form, is enacted into law it will simply be the forerunner of what will come. I saw that. Despite the concerted efforts of the working people and the business people of Colorado there has come a revulsion of feeling against this Colorado compulsory investigation law, which denies the right of the men to strike pending an investigation, and an investigation

carried on for months. The governor of Colorado, day before yesterday, in his inaugural address or his message to the legislature, urged the retention of this law which makes the movement of the workers and the business men of Colorado all the more difficult to secure its repeal, because it was assumed that the legislature will not pass a repealing act if the governor will veto it. If he would not veto it he would not anticipate the possible passage of it by the legislature.

Gentlemen, I want to call your attention to this. I hold in my hand a piece of news gathered from Colorado and published in the American Federation of Labor weekly news letter of January 13, which is anticipated for publication Saturday. It is really a news letter printed for all of us. Let me read it, sir:

DENVER, June 13.

"There is no reputable Colorado attorney who will or who has defended the legality of the 'can't strike' law, passed by the last legislature," says the Denver Bulletin. "At a meeting of the Bar Association, in Colorado Springs, last summer," says this paper, "Attorney E. P. Costigan, whose interest in the big question is well known, delivered an address in which he declared that the industrial law was subversive of every principle of human rights and in direct conflict with constitutional guaranties. While the Industrial Commission was represented at this meeting by its local member, yet the statements made by Mr. Costigan went unchallenged."

There is no reputable lawyer in all Colorado who will undertake to defend this law, and the attorney for the industrial commission, intrusted with the enforcement of the law, allowed the statement of Mr. Costigan to go unchallenged.

Senator BRANDEGEE. I am not familiar with that law.

Mr. GOMPERS. It is a duplicate of the Canadian act; at least, I mean substantially, sir.

Senator BRANDEGEE. Does it apply to employees in all sorts of industries?

Mr. GOMPERS. Yes, sir; and the Canadian act has been, under the orders in council, extended to all industries, particularly in the manufacture of munitions and contributory industries.

Senator BRANDEGEE. When you spoke of this law I either misunderstood you, or else you misspoke yourself; I understood you to say that the labor convention there had demanded the repeal of the Canadian antistrike law. Did you mean that?

Mr. GOMPERS. Yes; in Canada, and in Colorado for Colorado.

Senator BRANDEGEE. Well, you meant the law of Colorado. Is that one which was patterned after the Canadians?

Mr. GOMPERS. Yes, sir.

Senator BRANDEGEE. I understand you now.

Senator CUMMINS. Mr. Gompers, I want to ask you a question. You have been bothered so much that I am sure you will not mind this one. Suppose, now, you answer the question, if you will, upon the hypothesis that I put it to you. Suppose the 400,000 brotherhood men should strike; suppose the railroad companies could not hire competent people to run their trains, competent men to manage or run their trains; suppose that everything is absolutely peaceful, no disorder, no violence, but there is not a train moving in the United States, and not likely to be. Suppose you had all the powers of government in your own hands, and it was up to you to do something, or do nothing, according to your judgment, what would you do, if anything, to meet that situation?

Mr. GOMPERS. It is a hypothetical question, and I can scarcely conceive of myself occupying that position. As a matter of fact, my whole life's work has been that of divesting the executive officer of the American labor movement of power. I have said, and I repeat, that if I can not win in a controversy with a man or in an organization by persuasion, by argument, by appeal, I do not want to win at all.

Senator CUMMINS. My question is purely hypothetical. I put you in the stead of the President, Congress, and everybody else.

Mr. GOMPERS. The reason I mentioned that, sir, is because of the difficulty of my imagining myself in a position of power. And yet I do not want to evade the question. I will try to answer it the best I can. Whether that be me, or whether it is the Government of the United States, as a unit—

Senator CUMMINS. That is what I have in mind.

Mr. GOMPERS. It is the same thing; that is the idea. Well, now, of course every man's opinion may differ from another's. On my honor as a man, I believe that if the Congress had not enacted the Adamson law, and the men had taken their hands from the throttles of the engines and stopped work, not one hour would have elapsed before the managers would have conceded the eight-hour day, and would now.

Senator CUMMINS. That, Mr. Gompers, is controverting the hypothesis, which may or may not be true. I quite agree with you that—

Mr. GOMPERS. If my comprehension is correct, I think that would have been true.

Senator CUMMINS. I think some of the apprehensions were very much exaggerated, but I am assuming now that the strike has taken place, the strikers do not attempt to interfere in any improper way with the operation of trains, but the railroad companies are unable to employ others who are competent to run their trains. Now, I am putting you in the place of the Government, with all the powers of Government. What, if anything, would you do under those circumstances?

Mr. GOMPERS. I would not interfere, sir, and I give you this for my position. I say this as an American, with the concepts of America, if I undertook to overturn the system of government, then I could do it, and then would do it, but if I had the conception of human rights and human liberty, I would not interfere. Either the public, in its essence and in its spirit, must be maintained, or we will revert, or we must revert, back to the conditions of compulsory labor. There is no middle ground, and if the power of government was vested in me, as stated in the hypothetical question, with the concepts of and the love for Americanism, American institutions, American freedom, and American hope, I would not interfere, even though there would be great inconvenience and some suffering.

The people of this country, the railroad men, are not barbarians. There is some consideration felt by them and held by them for the rights and the interests of the people. I assume, while I am not personally acquainted with all the railroad managers, I imagine that they, too, are not barbarians, and they have some consideration for

the rights and the interests and the convenience of the people, and taking my lesson from the experiences, not only of my own time but of all the times of men's lives. I have not the slightest doubt that within 24 hours there would be an adjustment of this matter in controversy.

I said only briefly a moment ago, and I want to emphasize it, so that I may be clearly understood, and perhaps I have no right, I am sure I have no right, to quote my authority, and I believe it to be absolutely true, that if there had been no Adamson law enacted, and it was understood that on the 7th of September, unless the managers had conceded the eight-hour day in principle, there would not have been a strike, for the managers would have conceded it. And let me say this, to show you how I feel upon this subject, that the convention of the American Federation of Labor—I will be open and frank with you, because I do not want to veil my mind and my conscience by any cloud at all—the chiefs of the railroad brotherhoods, four of them, came to our convention and delivered addresses, and stated their position, and in response I took occasion to review the situation somewhat in elucidation of the report which the executive council submitted to the convention upon that subject, and I said then that the American working people looked to the brotherhoods to live up to their declaration of the eight-hour workday, and carry with it anything that any one may desire to stigmatize me. I am free to say to you that if I had had an influential voice with the brotherhoods, I should have stood by the declaration of Congress that on the 1st of January, 1917, the eight-hour workday would go into effect, under the declaration of Congress, under the law of Congress, or if not, then the eight-hour day by the concerted action of the men.

Just look what occurred! I do not know whether it has escaped your attention or not, but it struck me very hard. Judge Hook, in the Middle West, had brought before him a case upon appeal by the railroads, so that the Adamson law should not be enforced, and without argument, in order that the case should come immediately before the Supreme Court of the United States, he heard little or no argument, and the court reversed Congress and the President. I do not know much of law, but I do know something of fundamental principles, and my judgment is this, that the practice has been that when a case has come before a court as to a controversy upon which the court itself does not want to express its own judgment, it allows the case to stand in status quo, to be determined by the highest court in the land, and not to declare the law unconstitutional, and make the Government the appellant rather than the railroads.

Senator CUMMINS. Mr. Gompers, just what do you mean when you say the eight-hour day in principle?

Mr. GOMPERS. It has been explained by the railroad men that by reason of the uncertainty of traffic and climatic conditions it is impossible to definitely state that there shall be no work beyond the eight hours in any one day. Hence their proposition was to establish the eight-hour day as a recognized working time for each day, and to penalize overtime, so that, in so far as ingenuity can devise improvements, the work shall be performed within the eight hours of the day, rather than in a fairly slipshod manner.

Senator CUMMINS. That was the proposition of the men?

Mr. GOMPERS. Yes, sir.

Senator CUMMINS. To penalize overtime?

Mr. GOMPERS. To penalize overtime; yes, sir.

Senator CUMMINS. Which would have tended to shorten hours, at least; but when overtime is not penalized, what does it mean to say an eight-hour day in principle?

Mr. GOMPERS. There is no such thing as an eight-hour workday, if work may be performed after the eight-hour day, and there is no increase in pay for that overtime; in other words, to penalize it.

Senator CUMMINS. That is what I thought.

Senator ROBINSON. Or some other penalty.

Mr. GOMPERS. That is, of course, if you stipulate by law, you may be able to do that, but I am speaking of the voluntary action of the workmen and the management.

Senator CUMMINS. But if a man should proceed to work after eight hours elapsed, and get no more per hour after that period than before, that is not an eight-hour day in principle, is it?

Mr. GOMPERS. It would not be, sir.

Senator BRANDEGEE. It is not immediately before this committee, but have you any views that you care to express as to the wisdom of Government ownership of the railroads of the country?

Mr. GOMPERS. I have views, but if I may be permitted to coddle them to myself for a while, I would like to do so.

Senator BRANDEGEE. All right. Have you stated them publicly heretofore in a general way, as to whether you favor Government ownership or are opposed to it?

Mr. GOMPERS. I have.

Senator BRANDEGEE. Publicly?

Mr. GOMPERS. Yes, sir. But I should prefer, if I may, not to discuss that just at this time, and open up another big question.

Senator BRANDEGEE. I did not want you to discuss it, but I did not know whether you would object to saying yes or no, as you have heretofore.

Mr. GOMPERS. I can not do that very well. Of course, I want, if I can, to be of some assistance to the committee, but I can not say yes or no without qualifying and without giving my reasons.

Senator BRANDEGEE. You are here to say what you want to. I do not want to ask you anything that you are not willing to state.

Mr. GOMPERS. I was going to say, Mr. Chairman and gentlemen, that for, oh, now, nearly 100 years there has been this movement of the workers all through the world—in the civilized world, at any rate—by which the old laws governing the relations between master and man, employer and employee, have become modified. Why, in Porto Rico—there is a gentleman right here in this room, now president of the Free Federation of Workingmen of that island, a part of the American Federation of Labor, who, with about 16 others, were arrested and put in jail, under the old Spanish law, which charged him and his fellow conspirators with robbing their employers of their labor. They were tried and convicted and sentenced to several terms of imprisonment, some a month, some 4 months, some 6 months, some 18 months, and some 4 years. That is Mr. Santiago. He is here representing the American Federation of Labor and the Porto Rican working people in the interest of the Jones's bill for full citizenship and nondeprivation of the right of suffrage. It was necessary, out of our poor means, to put up bonds



for the release of these men and to appeal to the Government of the United States.

Senator CUMMINS. You mean this has been done recently?

Mr. GOMPERS. About five years ago.

Senator CUMMINS. Since we acquired the——

Mr. GOMPERS. Since the United States acquired Porto Rico.

Senator BRANDEGEE. Is that law in force now?

Mr. GOMPERS. It is not, sir; but the only reason I brought this in is that that was the concept of the whole world; that two or more workmen who discussed wages, hours, and conditions of employment, and who would stop their work, robbed their employer of their labor; and in the old time it applied to the individual—the individual workman. If he wanted to leave the estate, he was brought back and was branded with a red hot iron on his forehead, indicating that he was a villian, an escape. If he attempted it again, he was branded with a red hot iron with the letter "S," condemning him for life as a slave; and if he repeated it he was hanged to the gibbet. That was in the individual cases of men.

Now, there has been this movement that has found its lodgment in the conscience of labor-loving men, who declared that such a state of affairs can not exist and civilization progress, and there has been a constant effort away from such a judicial and governmental situation and relation, until there has come the declaration, enacted into law by the Government of Great Britain and the governments of our several States, and the Government of the United States, that conspiracies shall not apply to the associations or the activities of the working people in the effort to improve wages, hours, or conditions of employment. We have gotten away from that element of the concepts of conspiracy, until it found its expression in the higher and broader labor provisions of the Clayton Act, and there is this one declaration in that act—the first sentence of section 6, the author of which in that law is Senator Cummins, of this committee—that the labor of a human being is not a commodity or article of commerce. That declaration is a repudiation of all the old concepts of the superiority of the master and the inferiority of the workers. It is a repudiation of the old doctrine of the law of supply and demand, as it applies to human beings. It is an affirmation of human liberty and the rights of the workers.

The individual liberty, secured through centuries of effort, and culminating in the enactments of this last three-quarters of a century, have been to extend the rights of individual liberty to collective liberty. The workers own nothing; I mean as workers they own nothing, they control nothing, they are interested in nothing but their own creative power, that of their minds and their hands. The difference between a slave and a free man is that a slave must work when his master so directs. The free man owns himself, and works, or refuses to work, at his own will, and at his own risk. That right we endeavor to give intelligent and moderate expression through our organized efforts. The more powerful that a labor organization becomes, the more careful and considerate does it become. It is the unorganized—and I am not saying this in approbrium to them, but they have not any avenue or means of mutual understanding or expression; they have no experience; they have no one to lead them, no one to advise them, no one to counsel them, and these great erup-

tions that we see occasionally are due to the unorganized condition of these workers. But you will find that as men become organized and maintain their organization and have fealty and loyalty to its purposes, some common desire to serve the rights and interests of their fellows as well as themselves you will find them becoming constantly more careful and guarded.

But the truth of the matter is this, gentlemen, in regard to the railroads and the managers. The railroads have viewed their own position, from the time of their organization, as in the old time. They were operating their railroads in the nineteenth century, but the mental condition of the managers toward the workmen was that of the old master and servant. Now, in the early days of these brotherhoods, when they were comparatively weak and unable to do very much, there was a strike in 1877. I am 67 years of age, and I know something about these things; I have lived through them and know them. The strike came really because of two things. I remember very, very distinctly that the managers of the railroads, at the time, told the representatives of the men that so far as their argument went they were right, but how were they going to achieve it, and the men inaugurated the strike of 1877. The chiefs could not influence them otherwise.

Now, the A. R. U. strike is another important instance. The A. R. U. organized in a great big hurry, in rivalry to the brotherhoods. They won a strike on, I think, the Great Northern, and it gave them a prestige among the railroad employees. The brotherhoods declared these laymen, declared these men in the brotherhoods and out had been so conservative that they had not secured anything for the men in the time they had been organized, and they were willing to risk anything in order to get some little improvement. Through the instrumentality of brotherhoods, through the instrumentality of the American Federation of Labor, in cooperation, we saved the day. There are many men who talk about the injunction gotten out by the Attorney General at the time as having been an injunction with shotguns in it. If I may be permitted to use the term, it is rot, tommy-rot. It was the influence of the brotherhoods and the American Federation of Labor which prevented that strike, or the extension of that strike, for it would have been a movement without responsibility, it would have been a movement not evolutionary but revolutionary and directly against the permanent interests of the men. But there were thousands and thousands of the railroad men who joined the American Railway Union in the effort, contrary to the wishes and hopes and actions of the chiefs of these brotherhoods.

Now, that was in 1894. Since that time there have been some demands made by the brotherhoods on the companies, and some little improvement here, and some little improvement there, some little here and some little there, and then, whenever the opportunity came, there were minute thieves, and there were money thieves, imposing all sorts of obnoxious conditions upon the men, and the railroad chiefs seemed to be in the position that they wanted by every means in their power to prevent a rupture, and the men, impatient at the slow progress made, or the lack of progress made, simply instructed

these men that unless the eight-hour day went into effect in principle, by penalizing overtime, they would take a strike vote, they would vote, and if it was affirmative, they would respond.

Now, that was the first time in the history of the organization of the brotherhoods that the brotherhoods' representatives came to these managers and told them, "This is the situation, and unless we get it, we will have no alternative but to submit this question, and from the temper of the men they are going to vote for it, and we are instructed to send out this vote, and there is no escape from it. If we resign, and some one else accepted our positions, they would have to do it." But the railroad managers really never believed that the railroad chiefs would put that order into effect; they did not believe it, that is the truth about it. They had come to look upon them as so ultraconservative that they would not dare to carry out the mandates of the men.

I can never forget the scene before your committee, when Mr. Garretson finished his statement. I am sure it must have made its impression upon every man present, when, in his wonderful manner, presenting the argument that he did, and his great heroic character—no matter how men may differ from him, we must concede that to him—he broke down and the tears coursed down his face, and he said that he could not permit anyone to write across his forehead the word "Traitor."

If the railroad managers were to understand that unless they conceded the eight-hour day, an eight-hour day that would mean an eight-hour day, because it would penalize overtime, I have not any doubt but what they would quickly come to the determination to grant the demands of the men.

If I may be permitted, I would like very much if there would be a better and more general reading of two works, indicating the past and the progress of to-day, the work of Prof. Therauld Rogers, entitled "Six centuries of work and wages," and the work of J. Osborne Ward, "The ancient lowly," and understanding something of the conditions portrayed and discovered and given to the world in these great works, and the pamphlet written by William Brandt in England, for which he was given a prize of £50, English money, for the best prize essay upon the industrial struggle.

Gentlemen, there are some few things that I have written and said and published, and which, if I could, I would like to have made a part of the record. I shall leave the suggestion with you for your disposition. I have in mind articles on "Compulsory arbitration in the railroad engineers' award," January, 1913. That you have already decided should go in. Also, "Tying workers to their tasks through compulsory government investigation," February, 1913; "Australasian labor regulating schemes," April, 1915; "And they would wish it on us," May, 1915; "Compulsory service or freedom—which?" October, 1916; "We want none of it," November, 1916; "Invasion by commission," October, 1915; "That 'Invasion by commission' editorial," December, 1915; "Benevolent (?) compulsion in Colorado," June, 1916; and "Compulsory service unconstitutional," January, 1917; "No compulsory arbitration," October, 1900.

If I may, I will give this list, because it contains the name of the publication, and the dates of the issues in which these articles appear.

The CHAIRMAN. You do not ask the insertion of the articles themselves?

Mr. GOMPERS. Well, I am going to ask some kindly Senator to ask the House to print these as a Senate document in the Senate, if I can get a Senator to do it.

The CHAIRMAN. You simply ask a reference to them here?

Mr. GOMPERS. Yes. Now, I hold in my hand two cartoons, which I should like you to examine. They are from a labor paper of Australia, called "The Worker." One is Thursday, March 13, 1913. It refers to the strike of the gas workers, in which college professors and students acted as strikebreakers.

Senator CUMMINS. This is Australia?

Mr. GOMPERS. Yes; in Australia. The lord mayor of the city of Sydney also acted as stoker in the strike. I simply want you to see this country without strikes.

Just this word, and I shall be done. Gentlemen, the sum total of my thought upon this subject is that I am pleading, more than arguing, against the introduction into our system of government of any form of compulsion in the relations between man and man, between employer and employee. The fundamental essence of freedom consists in the rightful ownership of man of himself, of his work, of his ability to work. I do not want to see in my time, and I hope it never will come in this, the country of my adoption, and in which I have lived more than 50 years—53—the introduction of a system that will be finally wiped out, but I am fearful of the means by which it will be wiped out.

In a recent discussion in this city I made some observations in regard to this subject of compulsory investigations, and Prof. Commons made the statement that the Congress of the United States did have the constitutional power to prevent strikes. I pinned him by repeated questions to find whether I understood him correctly, and he admitted that that was the essence of his statement, and I read to him from memory the constitutional provision against compulsory labor and involuntary servitude, except as a penalty for crime, of which the accused shall be duly tried and convicted, and he still repeated his statement, and in the endeavor to support his position he stated that the Supreme Court of the United States would hold such a law constitutional. My answer was something like this: "Perhaps that may be true; perhaps the Supreme Court would hold such a law constitutional," but I called his attention to the fact that the Supreme Court of the United States rendered a decision, the Dred Scott decision, which made it lawful for a human being to be followed into another State and brought back into slavery, and that the people of the United States reversed that decision on the battlefield in a civil war lasting more than four years, and it was my hope that I should contribute something in protest against the Congress of the United States enacting a law which I know, as sure as the sun rises and sets, will be followed, if enacted, by other laws to strengthen the law and make service compulsory, and that I have not the slightest doubt of the future of the human race. I have not the slightest doubt that whether it be by the road which we follow and pursue, the road of constructive work, helpful, normal human development, and the maintenance of liberty, or whether in the time

to come, but that it will come I am as sure as I am before you now, that that is going to be changed, if it is enacted, whether by a revulsion of feeling, whether by revolt in the pursuit of freedom, that great ideal of the human race, I have not the slightest doubt, and my effort as a citizen and as a man is that, at least, I shall not be responsible for permitting the enactment of any compulsory agency in the maintenance of the relations between the worker and the employer; not in my time. At least, I am going to make my contribution in order to prevent it.

The CHAIRMAN. Mr. Gompers, I would just like to ask you a few questions. I believe that the committee is in entire sympathy with all you have had to say regarding freedom and its value, but I want to call your attention to this fact: That unrestrained freedom means barbarism and civilization means freedom restrained by law and order. Now, we are face to face with an issue that has been made between the men who control all the railroads of the country and the men who work on all the railroads of the country, and that issue means, if the declaration of the railroad brotherhoods is to be carried out, an absolute paralysis, for a certain period of time at least, of all the means of communication between the different parts of the United States, and all the means of supply. Now, we have got to meet that situation, and we would be very glad to have the help of the railroad brotherhoods and their chiefs and the railway labor organizations and their chiefs, all of whom have a very high order of ability, in developing some method of meeting that situation, and I do not think as yet that you have helped us.

I wish to call your attention to another thing, and that is this: That we are now approaching a great economic struggle between the nations of the world for trade. It is anticipated that at the close of this war that industrial struggle between the nations for trade will take place, and we all know that a very considerable portion of the trade upon which the workers of this country rely is international trade, the export of products made by the workmen of this country. Now, we know that in order to meet other countries in the markets of the world and in order to sell our goods in those international markets the labor cost and the transportation cost and the interest cost of production must not be certainly in excess of those of foreign nations, otherwise we will lose that international trade or international export business, which now employs a great many of our workers. We also know that if the labor cost, the transportation cost, and the interest cost in this country considerably exceeds that of other countries, that the products of other countries are likely to invade our markets and displace the products of our working people. Now, just from the standpoint of the working people themselves, who have an interest both in the export trade and in the maintenance of our own products in our own markets, shall we leave the important question of transportation cost entirely to the employers and the employees on our great transportation systems and permit them, by agreement among themselves, in which the public have no interest, to impose upon the production of this country a large additional cost, and are we to permit them, by reason of struggles among themselves, without regard to the public interest, to so paralyze the production in this country as to take away the livelihood or impair the

livelihood of the vast mass of workers in our country? Now, that is the responsibility that faces every legislator now.

SENATOR CUMMINS. Before you answer that question, I am sure the chairman will be very glad to substitute the singular for the plural in his references to the committee, because there are some of the implications of the question in which I can not concur, and I would not want it to be understood that the conclusions, all of them, which are to be inferred from the question have been reached by the committee.

THE CHAIRMAN. I shall amend it in that particular. I say that is my individual view as a legislator, and I think it is the view of many others.

SENATOR CUMMINS. I have no doubt of it. Not of all of them.

THE CHAIRMAN. No; not of all of them.

MR. GOMPERS. I regret exceedingly that I have not helped the committee.

THE CHAIRMAN. I mean in framing something constructive with reference to this matter. Of course, you have been very clear and able in your presentation of views in opposition to legislation.

MR. GOMPERS. I tried to present the cause of freedom and justice and the perpetuity of the institutions of our country. If in furthering those thoughts and principles it would prevent the development and retard the growth of the United States, both in industry and commerce, then my whole contention would fall to the ground.

But the fact is that the basis for the advocacy of this species of legislation is that a strike means the prevention of that development and extension. There is no incident in all history to sustain that position. As a matter of fact, free workmen are the best workmen, the most productive workmen, the most competent workmen, and there are no working people in all the world, per man and collectively, so productive as are the working people of America. If we are to assume that increased wages and improved conditions of workmen implies essentially an increased cost of production there might be something to the contention. The fact is that wherever the highest wages are paid there you will find the best and most efficient work performed, man for man. To predicate the thought upon the idea that when increased wages are paid, and improved conditions secured for the workers, the workers will remain and the condition of industry and trade and commerce and transportation will remain exactly as it was before, it is not true. The greatest impetus for the introduction of new machinery and new methods of production and transportation is the movement for higher wages. Go to any country on the face of the globe and wherever the hours of labor are longest and the wages lowest there you will find the most primitive methods of production and transportation. Some few years ago I went South in my peregrinations—to create trouble as some people believed—and some friends took me around to see some things and I tried to look around and observe. I found there that men were dredging the river by hand with scoops; and I inquired, "What is that, when we have these modern dredges and suction pumps and all that?" "Well," they said, "you see they are only getting 40 cents a day." Men are cheap—no improved methods of production going on.

As to the cost of transportation, I am not intimately acquainted with the actual figures of the cost of transportation in the United States as compared with other countries; but what will cost \$2 to

transport on the railroads any article of merchandise from New York to San Francisco will cost \$50 in China, with labor there at 6 cents a day.

How am I to interpret the question asked by yourself, Senator Newlands, when out of this situation you call attention to conditions which you believe will arise after the close of the European war? Is it the impending strike or the possible strike of the men on the railroads, or is it predicated upon the idea of stopping all strikes, whether on the railroads or otherwise? I can not conceive upon which basis the question is asked, if it is predicated upon the industrial competition of the United States with European countries after the close of the war, unless, of course, the inference may bear out the statement that I made that, after all, in the minds of some it is the effort by law to tie the men of labor to their tasks.

The CHAIRMAN. I disclaim any such idea, Mr. Gompers.

Mr. GOMPERS. I do not know what other inference I could draw from the reference to the industrial competition of the United States with Europe after the close of the war—increased cost of production by reason of labor and transportation. I firmly believe—as I said, I am not acquainted with the actual figures, but I have not the slightest doubt and shall continue to believe unless otherwise shown that the cost of transportation in the United States is less than that of any European country, and that the cost of labor, though higher in the United States, is far, far outweighed by the increased production. Ask any employer who has had some experience on this subject and for any considerable period of time, and he will tell you that by reason of a strike for higher wages or a demand for higher wages he has put in new machinery, new processes, new methods, new economies, and that the cost price of the article has decreased. Of course, no man can take contemporary prices as a basis for normal conditions. Take decade by decade for a period of 50 years since we have become in part an industrial country and you will find that outside of this abnormal condition of to-day that has been the tendency—to decrease the cost and the selling price of everything capable of human production.

The CHAIRMAN. I wish to add, Mr. Gompers, that I think every intelligent legislator believes with you that the general movements of labor and of labor organizations have been in intelligent directions and have vastly improved not only the conditions of the workers but the general conditions of society. I think there is a general concurrence in that view amongst legislators. There has been little disposition to interfere with disputes between employers and employees, because, I think, the view has been that by a process of evolution they would work out some method that would be fair to society of adjusting these disputes. Thus far these disputes have been mainly local. On the railroads themselves they have involved only one or two or three lines, and while these disputes have occasioned a good deal of discomfort and inconvenience in particular localities, they have not affected society at large. Now for the first time, I think, in the history of transportation we find all the men engaged in the operation of trains organized in such a way as to act collectively; and individually I have not the slightest objection to that. I have not the slightest doubt but that collective deliberation and action will in the end result not only in their good but in the good of society at

large. But in connection with that we are met with the fact that an instrumentality which has hitherto produced inconvenience and discomfort only in localities—and which we recognize as a very useful factor in the development of what the working man desires and ought to have—is to be employed now in the practical paralysis of all the operations of society. For, of course, if you tie up transportation for a week or two weeks it means that all production, or almost all production, practically comes to an end, and thus the employers and their employees and all society are involved in common chaos.

Now, the question is as to whether a civilized society can simply remain inert and inactive when it is confronted by such a condition; and I have been in hopes that the men connected with the labor organizations and brotherhoods, who certainly have shown extraordinary capacity in leadership and in organization, would help us in some way to construct some plan by which these disputes can be settled as all other disputes between man and man and between man and the Government are settled—by some tribunal organized for the purpose. It may be that it is impossible for you to suggest any. I must say that my own mind is groping upon the subject, but I am going to try to do something as a single legislator in that direction, and I invite the helpful and cooperative aid of the labor organizations in that direction for the good of us all and not in any spirit of hostility to your organizations, whose beneficent results I fully recognize.

Mr. GOMPERS. Senator, may I be permitted to make an observation?

The CHAIRMAN. Yes.

Mr. GOMPERS. If the railroad men undertook to perform any affirmative action that would mean an attack upon life, upon the person, upon property, they are subject to the laws of the country and of the States. If they undertake to do an act that would unlawfully prevent any other workman, a citizen of the country, from going to work, they are amenable to the law and can be made to answer for such action; but when the men working in the railroad service do nothing more than quit their trains and say they will not work under the old conditions, they are within their rights, constitutionally and inherently, and the Republic can not endure if that right is taken from them. You can not make free men of some and compel others to give service or be punished by fine or imprisonment or both.

Look at the disposition of the railroad companies, assuming that the Adamson law is merely a declaration of Congress in the principle that eight hours should constitute a day's work. Take that law, passed by a practically unanimous vote of the Congress of the United States, recommended by the President, and then signed by the President—no consideration is given to it other than to fight it before the courts. Suppose, now, these presidents and the other officials of the railroads should themselves go on a strike, or suppose they should resign their positions and leave all of these institutions without directing boards, without a president, without a general manager, without superintendents, without foremen, and all that sort of thing. How are you going to reach them? Have they not the right to resign? And is not that a strike?



The CHAIRMAN. I think if they should resign, and the operation of the trains in interstate commerce should, as a result of that, be paralyzed, the Government would find some way of having those trains operated.

Mr. GOMPERS. I do not know of a way. Suppose the Members of Congress, the House and the Senate, should resign collectively——

Senator BRANDEGEE. Oh, they may die, but they will never resign. [Laughter.]

Mr. GOMPERS. Suppose they should resign. They have a legal right to do so. Would they be indicted for conspiracy for resigning from the service of the Congress of the United States? Suppose the House of Representatives refuses to make appropriations until the will of the House is obeyed; and that, after all, is the inherent principle provided in our Constitution, and that is taken from the British law, that appropriations must originate in the House of Representatives. Suppose the House of Representatives should determine that a certain law should pass as a condition precedent to the making of any appropriations for the Government. Would they be held before the courts for conspiracy and subjected to a fine and imprisonment? The whole element of popular government has its essence right in the power of the appropriations made by the House of Representatives, and it is the old idea of compelling the king to yield.

The CHAIRMAN. But do you doubt that if to-day we were confronted with a situation which would involve such a paralysis of the Government as you suggest, as legislators we would be now engaged in some effort to meet that contingency?

Mr. GOMPERS. The contingency which I have mentioned?

The CHAIRMAN. The contingency which you have referred to, which is really a serious danger, such as the prostration of commerce has been.

Mr. GOMPERS. As a matter of fact, the King would yield.

Senator CUMMINS. He is speaking of the House of Representatives, and you are speaking of the railroads. There is a little difference between them, I think.

The CHAIRMAN. This question of the paralysis of transportation is a practical question that is facing us, and we know that it is there. The contingency that you refer to, regarding a strike of a legislature, or an absolute failure to perform its duties, is not an imminent danger. It is not suggested at all.

Mr. GOMPERS. Some might think it was desirable, but I do not. [Laughter.]

The CHAIRMAN. But suppose that that contingency should face us, and we should know that within a year there might be a possibility of such a thing as a practical paralysis of government by the strike of its legislators and its executive officials. Don't you suppose we would be very busy with legislation now, either in the organic law or in the statute law, to provide for that contingency?

Mr. GOMPERS. You would have a nice time doing it without the House of Representatives.

The CHAIRMAN. Ah, but I am speaking of a threatened strike. As yet we have not a paralysis of transportation. We are speaking only of a threatened paralysis, and I assume that you were speaking only of a threatened strike of legislators and executive officials.

Mr. GOMPERS. I used that as an illustration of rights.

The CHAIRMAN. Yes. Now, the question is, when we know that a danger of that kind is imminent in the future, either a paralysis of transportation or a paralysis of government, don't you think the latter would be the subject of very anxious consideration by legislators now in office?

Mr. GOMPERS. I think so; but you would have the popular brand of the Government, in which appropriations must originate, against you, and you could not enact any legislation without that body.

The CHAIRMAN. Not if the strike were on, of course.

Mr. GOMPERS. No; or before. As a matter of fact, the Constitution provides that appropriations must originate in the House. However, that is probably a little wide of the mark.

The CHAIRMAN. Is there anyone else who desires to be heard?

Dr. CRAFTS. I should like to submit a few remarks in addition to what I said the other day.

The CHAIRMAN. Very well, proceed.

**STATEMENT OF REV. WILBUR F. CRAFTS, SUPERINTENDENT INTERNATIONAL REFORM BUREAU, WASHINGTON, D. C.—Resumed.**

Dr. CRAFTS. Mr. Chairman, my name has been brought in a number of times. I would like just a minute to reply to what Mr. Gompers has said, and, I understand, several others. I think if my original remarks as taken by the stenographer are examined, you will find that the points have not been well taken.

I did not say that Australia was a land without strikes. I specifically said that there were strikes. Nor did I say that even of New Zealand. They have had one or two. What I said was that the common method of settling these industrial difficulties in that social front of the world was by conciliation and by reference, voluntarily or otherwise, to the courts; that it is the custom there and that it works well. If there are exceptions, they are the exceptions that come to all rules.

As to the figures that I gave that 5 per cent are involved in strikes and that 95 per cent of us are the sufferers, I think that statement has not been shaken. I said that in any particular strike, whether it were the city or the Nation, it would be found in almost all instances (it would be true in this case) that not more than 5 per cent of the population to be affected, whether national or local, would be involved directly in the strike, and that 95 per cent, which would include in such a case as this the families of the workingmen themselves, must suffer—the babies and the mothers—but in any case that I can think of, of a city strike or a national strike, even when the transportation of a city is involved, not more than 5 per cent are directly interested in the strike and 95 per cent must be the sufferers.

And so when it comes to interstate transportation I made this very distinct point, that that is the circulation of the blood; that we can not consider that that is open to strikes any more than the United States mails which it involves, and that as we settle all other difficulties between men, not by quarrels in the streets, but by law, we are bound in this case to settle them by the orderly processes of

law. The only controversy, it seems to me, is just this: That the question is whether a quarrel existing between two parties representing 5 per cent of the population shall incommode and endanger life and property for the 95 per cent, without even giving a reason for their quarrel, without even showing the man from Missouri why they are fighting. Five per cent engaged in the management and in the working of the railroads being involved, 95 per cent must suffer peril of life and property without even having a short period in which to look into the matter, and to be even rendered the reasons for the quarrel. It seems to me that the whole matter of the strike to-day is essentially a matter of resorting to violence instead of law; and, as I said at the time of the Carnegie strike, when the workingmen have a thousand times as many votes as the employers, the orderly processes of law, which are used more in some other countries than here, of electing officials representing labor and resorting to the courts, is the plan that should be followed, and that particularly a strike involving the United States mails and the railroads of the country is an unthinkable situation which the public will surely look to Congress to make impossible.

(Dr. Crafts was thereupon excused.)

**STATEMENT OF MR. SAMUEL GOMPERS, PRESIDENT AMERICAN FEDERATION OF LABOR—Resumed.**

MR. GOMPERS. Mr. Chairman, I am very glad that the Rev. Mr. Crafts has cleared up some things. I am perfectly willing that his statement now shall be compared with his statement before this committee last week, when he stigmatized these men who go out and strike—that is, refuse to work—virtually as hoodlums and murderers and mobs, etc. I wonder whether he did not leave the same impression upon the members of the committee that he left upon my mind—that Australasia was a country without strikes, and that wherever he came in contact with the United States he simply ran into strikes. I do not want to argue with him—

THE CHAIRMAN. He certainly did not make the impression on my mind, Mr. Gompers, that he was characterizing the strikers as murderers and lawless men. On the contrary, I thought he was distinguishing between the strikers themselves and the disorderly elements of society that are often called into the strikes by the prevailing emotions and disorder.

MR. GOMPERS. He never mentioned the fact that much of this is provoked and paid for by the employers of the country—

THE CHAIRMAN. Possibly.

MR. GOMPERS (continuing). And their gunmen and detectives and spies and traitors. There are men who will not differentiate between violence performed by men and the men stopping work, simply folding their arms—not with their hands uplifted, not with a mallet or a revolver in their hands, but a man or a number of men simply folding their arms and refusing to work until they get better conditions. Of course, ministers do not go on strikes, but they usually heed a call higher up.

THE CHAIRMAN. We will now hear from Mr. Perham.

**STATEMENT OF MR. H. B. PERHAM, PRESIDENT ORDER OF RAILWAY TELEGRAPHERS.**

Mr. PERHAM. It is assumed that any bills such as are now being considered by your honorable committee, if enacted into laws, will be construed as applicable to railroad telegraphers, train dispatchers, telephone operators, levermen, interlockers, train directors, block operators, and staffmen (hereinafter termed telegraphers) who are engaged in the operation of trains, or whose duties directly connect them with the movements of trains in interstate commerce. Such was the decision of many courts respecting the arbitration law commonly known as the Erdman Act, the Knowland Act, and is likely to be the case with the Adamson Act.

Consequently it seems to be in order that the above enumerated class of railroad employees should be permitted to express their views respecting proposed legislation which may affect their welfare and hence the chief executive officer of their organization requested leave to file a statement, which was granted, and the same is herewith respectfully submitted.

Telegraphers have for many years past endeavored to establish an eight-hour day by contract with the railroads. Their efforts along those lines were not successful. In the year 1907 Congress enacted a law providing:

That no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the day time, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four hour period on not exceeding three days in any week.

This law enhanced public safety and ameliorated telegraphers' conditions to a large extent because they were kept on duty from 12 to 18 hours per day quite generally prior to March, 1908, the date the law became effective.

Interstate Commerce Commission reports for the year ending June 30, 1916, indicate that the railroads report 15,967 cases where telegraphers were on duty more than nine hours in continuously operated day and night offices. And 3,139 instances where telegraphers were on duty more than 13 hours in offices operated only during the day time.

A new bill providing for 8 continuous hours on duty and 16 hours off duty in a 24-hour period for telegraphers was introduced in the House of Representatives by Mr. Cullop, of Indiana, last year, but it was so emasculated by committee amendments that it is likely to be left on the calendar.

H. R. 19730, introduced in the House of Representatives on January 6, 1917, by Mr. Adamson, of Georgia, contains some important amendments to the existing hours-of-service law.

It will be noted that efforts to establish the 8-hour day by contract between the railroads and their employees have been unsatisfactory and that legislative efforts have been only partially successful.

The telegraphers desire to establish 8 continuous hours service in a 24-hour period as a standard work day.

Telegraphers have no fault to find with arbitration, but they strenuously object to compulsory service, and compulsory arbitration invariably includes some form of compulsory service.

Man's necessities should be his only compulsion to labor.

Laws that might be acceptable to citizens of Canada, New Zealand, and Australia may not be expected to be acceptable to citizens of the United States. We have a Constitution prescribing limits for our legislative activities, while the other countries named have not. While compulsory service under another name might properly be tolerated there, it is prohibited here by our Constitution except as a punishment for crime.

The artful idea recently advanced that individuals might quit their employment under a compulsory arbitration law, but no strike could be ordered, is only another way of declaring a labor organization to be unlawful in its functions, and an attempt to curb and limit the actions of men whose life work is not understood or appreciated by those outside the influence of a labor organization.

Let us get back to real things. Arbitration is a misnomer if there is anything compulsory about it. Compulsion means jail or fines for somebody. It savors more of a criminal court than a tribunal formed for the purpose of adjusting equitably a workingman's grievance.

Permit me to call your attention to the work done under the existing law relating to mediation, conciliation, and arbitration.

From the approval of the Newlands law on July 15, 1913, up to January 1, 1917, a total of 65 controversies have been adjusted through the Board of Mediation and Conciliation. Of this number 48 cases were settled by mediation, 7 were adjusted by arbitration, and 5 by mediation and arbitration. In two cases arbitration is pending, hearings beginning on January 8. In one case which the board had attempted to mediate, a strike was arrested by congressional action. In one case settlement was reached between the parties themselves after the board had begun mediation proceedings. In one other case mediation proceedings resulted in an arbitration agreement, but before the arbitration actually began a settlement on basis suggested in mediation was arrived at between the parties.

Applications to the board:

	Cases.
Employees made application for service of board in.....	25
Railroads made application for service of board in.....	15
Joint applications by roads and employees made in.....	17
Board proffered its services, which were accepted by both parties in.....	8

Total cases..... 65

Since January 1, 1917, one case has gone to the board—that of the New York, New Haven & Hartford Railroad versus telegraphers, station agents, and levermen. This case is now in mediation in New York City.

In the above compilation we have mentioned cases in which all classes of railroad employees covered by the law were concerned, the following compilation relates to the cases in which the members of the Order of Railroad Telegraphers took part:

Date.	Applica- tion made by—	Railroads involved.	Employees.	Settled by—	Date.
1913. Sept. 27	Men.....	Chicago, Rock Island & Pacific.	Telegraphers, telephoners, station agents, towermen (1,675).	Mediation.....	Oct. 27
Sept. 22	...do.....	Wheeling & Lake Erie; Wabash Pittsburg Terminal; West Side Belt Ry.	Telegraphers, telephoners, station agents, signalmen (205).	Arbitration...	Jan. 13
1914. Jan. 8	Road.....	Delaware & Hudson..	Engineers, firemen, conductors, trainmen, telegraphers (300).	Mediation.....	Jan. 19
Jan. 12	Men.....	New York, Chicago & St. Louis.	Telegraphers, station agents, signalmen (260).	Arbitration...	June 13
Jan. 24	Joint.....	Baltimore & Ohio; Baltimore & Ohio Southwestern.	Telegraphers (1,969).....	Mediation.....	Apr. 2
Feb. 13	Men.....	Oregon - Washington Ry. & Navigation Co.	Telegraphers, telephoners, station agents (187).	.....do.....	Mar. 6
Mar. 16	...do.....	Cleveland, Cincinnati, Chicago & St. Louis.	Telegraphers, telephoners, station agents, towermen (1,183).	.....do.....	Apr. 18
Do.....	...do.....	Lake Shore & Michigan Southern.	Telegraphers, telephoners, station agents, towermen (660).	.....do.....	Apr. 25
Do.....	...do.....	Chicago, Indiana & Southern.	Telegraphers, telephoners, station agents, towermen (105).	.....do.....	Apr. 29
Sept. 28	...do.....	Northwestern Pacific..	Telegraphers (156).....	.....do.....	Jan. 2
July 2	...do.....	Baltimore & Ohio.....	Telegraphers (975).....	.....do.....	Mar. 11
1915. Jan. 6	...do.....	Chicago Great Western	Telegraphers, telephoners, station agents, signalmen (340).	.....do.....	( <sup>1</sup> )
July 27	...do.....	Kansas City, Mexico & Orient.	Telegraphers (87).....	.....do.....	<sup>2</sup> Aug. 6
Jan. 6	...do.....	Chicago Great Western	Telegraphers, telephoners, station agents, signalmen (340).	.....do.....	<sup>1</sup> Sept. 10
Nov. 2	Joint.....	International & Great Northern.	Telegraphers (161).....	.....do.....	Nov. 20
1916. Feb. 11	Men.....	Toledo, St. Louis & Western.	Telegraphers (155).....	.....do.....	Feb. 21
May 4	Services tendered.	New York Central (lines east).	Telegraphers, telephoners, station agents, towermen (1,950).	Mediation and arbitration.	June 10-Aug. 1
Do.....	...do.....	New York Central (lines west).	Telegraphers, telephoners, station agents, towermen (800).	.....do.....	Do.
Do.....	...do.....	New York, Chicago & St. Louis.	Telegraphers, telephoners, station agents, towermen (225).	.....do.....	Do.
Aug. 7	Joint.....	Baltimore & Ohio; Baltimore & Ohio Southwestern.	Telegraphers (2,200).....	Mediation.....	<sup>2</sup> Sept. 11
Oct. 21	Men.....	St. Louis Southwestern.	Telegraphers, telephoners, station agents, levermen (500).	Mediation and arbitration.	<sup>4</sup> Nov. 14
Nov. 8	...do.....	Missouri, Oklahoma & Gulf.	Telegraphers, telephoners, station agents (120).	Mediation.....	Nov. 20
Nov. 20	...do.....	Midland Valley.....	Telegraphers, telephoners, station agents, levermen (50).	.....do.....	Nov. 26
1917. Jan. 5	Road.....	New York, New Haven & Hartford.	Telegraphers, station agents, levermen (1,342).	.....do.....	( <sup>6</sup> )

<sup>1</sup> Mediation began Feb. 1, 1915; see footnote a.<sup>2</sup> See footnote b.<sup>3</sup> See footnote c.<sup>4</sup> Arbitration pending.<sup>5</sup> Mediation pending.<sup>6</sup> (a) In consideration of the roads' agreement strictly to apply the present schedule in the meantime, which the employees claimed was being violated in some particulars, the request of the road for a postponement of mediation was agreed to by the employees.

(b) Mediation was conducted by correspondence and the parties reached an agreement.

(c) Mediation began Aug. 7, 1916, but by agreement of all parties was postponed to Aug. 21, 1916.

The proof of the pudding is in the eating thereof. As far as the telegraphers are concerned they have gained much by mediation, conciliation, and arbitration, and are therefore willing to go along with the present law. As to the proposed compulsory-arbitration laws it is our view that they are illogical, inconsistent, unconstitutional, and will be altogether undesirable to the free workers herein

represented. Government by consent of the governed is an axiom dear to the American people. Railroad employees are not going to be content under a law that holds them to their job when they want to quit. They are not in the frame of mind to indorse a proposed law that means compulsory service for them for any length of time be it 5 or 90 days or any other period. We ask you not to add to our difficulties by enacting drastic laws or create more unrest among the wage earners than is in evidence at the present time.

In peaceful times, such as prevail in this country, there is no occasion apparent for the enactment of such drastic legislation as is now under consideration. It is doubtful even if this country was about to enter into a war that such legislation should be enacted in advance of its necessity. The necessity for the compulsory enlistment of railroad employees may never arise. Then why put such an offensive enactment on the books? Again, it may reasonably be asked why inflict upon railroad employees compulsory enlistment and not all other eligible citizens?

The Order of Railroad Telegraphers is opposed to the bill that aims to authorize the President of the United States, in certain emergencies, to take possession of railroad, telephone, and telegraph lines, and for other purposes.

The bills now under consideration, wherein certain forms of compulsory arbitration and military control are contemplated, portend a grave departure from the accepted principles of democracy, including as they do the abandonment of constitutional guaranties and the possibility of large numbers of citizens being fined or thrown into jail because they ceased to work.

Even in countries governed by monarchs and dictators and at a time when they were harrassed by wars, compulsory enlistment of citizens met with such strenuous opposition that it was only adopted as a last resort to save the life of the nation, while here it is solemnly proposed for railroad employees in times of peace.

It would appear that democracy had been shaken off its foundation, perhaps by war news from abroad and the possibility of some railroad employees at home ceasing their labors because of grievances that should have been equitably and promptly adjusted long ago.

The CHAIRMAN. I am informed that Mr. Doak wishes to submit some few remarks in addition to what he has already said.

**STATEMENT OF MR. W. N. DOAK, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF RAILROAD TRAINMEN, ROANOKE, VA.—Resumed.**

Mr. DOAK. Mr. Chairman, you say you are going to close the hearings this evening?

The CHAIRMAN. Yes. Is there anybody else that you would want to have heard?

Mr. DOAK. There is one subject that has not been touched on at all by us, and that is the proposed act authorizing the President of the United States to take over the railways, and if you are considering that, and if you are going to close all the hearings, we would like to have a little something to say about that.

The CHAIRMAN. All these bills were put into the record at the first hearing, and the announcement was made that hearings would

be had upon all of them; so the opportunity has been presented. But if you have anything to say upon the subject by way of a supplemental brief, it will be printed, just as your other statements have been, in the record. There is a disposition on the part of the committee to close the hearings now, and to proceed to the consideration of these bills.

Mr. DOAK. Mr. Chairman, of course you have a right to do so; I will not question that. But this is a very big question.

Senator CUMMINS. Go on and let us hear what you have to say now.

Senator BRANDEGEE. I want to suggest this to you, Mr. Doak, without any relation as to whether we shall hear you or how extensive the hearing ought to be on that. The bill that Mr. Adamson has introduced in the House incorporates that provision as a part of it. Perhaps you have noticed that—

Mr. DOAK. Yes, sir.

Senator BRANDEGEE (continuing). Authorizing the President to take possession of these roads as a military necessity, etc. I do not know whether he is going to have any hearings or not.

Mr. DOAK. I understood that he announced that he would not, Senator; and I suppose that is a part of the "spanking" process that he is going through.

Senator BRANDEGEE. If the House should pass that bill, of course I assume it would be referred to this committee, and then we might, probably would, have hearings on that House bill. But I do not care to say anything more about it. You had better proceed now.

Mr. DOAK. I would prefer, instead of filing a supplemental brief, to talk the matter over with you and give you a chance to ask me questions.

Senator BRANDEGEE. Why don't you go right ahead and give your general views, and then if you want to amplify them later by a brief or by talking individually with us perhaps that could be done.

Mr. DOAK. Mr. Chairman and gentlemen, I have not prepared anything on this at all. As a matter of fact, yesterday or day before, when I closed my testimony on the other measures, I suggested at that time that possibly I wanted to be heard, but I was not sure; and I never said anything about this bill at that time, and did not want to get that phase of the situation confused with what we had under consideration.

I understand this bill has certain language in section 1, particularly, that I would like to have some information on, as well as to say some things about. It says:

That in case of actual or threatened war, insurrection, or invasion, or any emergency requiring the transportation of troops, military equipment and supplies of the United States, the President of the United States, when in his judgment the public safety may require, is hereby authorized to take possession of, etc.

There is a question in my mind if the language contained in section 1 of this act is not very far-reaching. "In case of actual or threatened war, insurrection, or invasion, or any emergency requiring the transportation of troops." I may have entirely the wrong idea of this legislative program proposed by the three bills. One or two



we have already spoken of—one proposing what we term “compulsory investigation”; another measure providing for the Interstate Commerce Commission to fix the rates of pay of these men; and, third, a bill introduced providing that the President of the United States could take these railroads over. I want to say, as to the patriotism of the men we represent, that it is not necessary to have any law. We are ready and willing at any time to respond to this Government, and I can only refer you to what now is transpiring in the Dominion of Canada. The organization that I have the honor of representing has to-day approximately a thousand members, if not more, in the trenches in France, who have volunteered for their country; and the reason that the railroads in Canada were not requested to grant an eight-hour day by the employees in Canada, and that the last wage movement was restricted entirely to the United States, was the fact that the men in Canada said, “No; we have trouble; we are in war; and we will not submit this to our men.”

Senator CUMMINS. Mr. Doak, I do not believe that a single member of the committee has any doubt about that whatsoever.

Senator ROBINSON. No; I do not think so either.

Senator CUMMINS. We know the men, and we know they are among the best citizens of the country, and would respond to the call of their country as generally as any other class, probably a little more generally than some other classes.

Mr. DOAK. Senator, I am just trying to lead up to a certain point in stating this. And when the trouble arose in Mexico, something was done in our organization that never had been done before. We have a war clause in our insurance policies, as all insurance companies have. The president of our organization suspended that and told the men to go to Mexico and fight for this country if necessary. Every day we are paying death claims on men that have been killed in the European war. But what I am leading up to is this: Am I to understand, in the United States, that such a condition is made possible by this act as did actually prevail in the Republic of France? Is it the intention that these men at any time, in a given territory, on a given railroad, are to be drafted into military service, to defeat the purpose of a strike in case they are called out? If such is the case, gentlemen, we are unalterably opposed to it.

Now, is that the case? Could that be construed under the clause of insurrection? Could that be construed by any means to mean that it would be possible that the President of the United States or any man in this country could thus defeat the purpose of the men, as were the purposes defeated by the President of France, calling the men to the colors under the military clause or under some clause of this kind that they had in France, absolutely defeating the men and killing the strike?

Senator CUMMINS. Mr. Doak, I do not believe that any member of this committee can answer that question. I have been asking it myself ever since I saw it. Every man, I fancy, must read the bill and determine for himself what it means.

Senator ROBINSON. May I ask you a question?

Mr. DOAK. Certainly.

Senator ROBINSON. If the bill were confined to extending this power to the Chief Executive, to be applied solely in case of actual or threatened war, would there be objection to it?

**MR. DOAK.** I do not think we would object to that.

**Senator CUMMINS.** Even in that event, would you be willing to operate the railroads for the commerce of the country under military rules, so that you would have the same punishment for desertion?

**MR. DOAK.** Oh, no. But, as a matter of fact, Senator, you know if we had war in this country conditions would change materially. I think that practically everything would be, as has been in the past, under military control during that period of war.

**Senator CUMMINS.** Of course I do not agree to that at all. I do not know whether that is what is intended by this bill or not. It has never been explained before the committee by the person who drew it or who had some idea in regard to what was intended to be accomplished; but if it is intended that even in time of war ordinary civil pursuits shall be put under military rule, and that all our civilians shall be subject to military trial and punishment as members of the Army are, I think it is absolutely shocking. But I do not know whether that is what is intended or not.

**MR. DOAK.** I have not gone into this thoroughly, and, as a matter of fact, the statement I made is off-handed. I have not taken the matter up with our board of directors, nor anything of that kind; but I do say this, that if this innocent-looking bill that was drafted, and about which you have heard so much in the press, to be applied only in case of war or actual invasion of the country—if other language is put in there and it means in substance that this power will be used at any time to defeat the purposes of the men, then I want to register, without authority, protest, which I know every member of these organizations will certainly subscribe to in the final analysis.

**Senator BRANDEGEE.** I do not think there is any question—there is none in my mind—that when these men are drafted into the military service of the United States, and under the provision on page 2, from line 7 to line 10—"the employees shall be thenceforth considered as members of the Military Establishment of the United States, subject to all restrictions imposed by the Rules and Articles of War"—that they are absolutely on the same basis as enlisted men in the Army.

**MR. DOAK.** I did not read anything but the first section of it, because I have not had time.

**Senator BRANDEGEE.** Under the previous section which you referred to, or, at least, the provision on page 1, that they may be so drafted whenever there is any emergency in which the President thinks the public safety may require it, he is authorized to do these things; and it seems to me that if there was a railroad strike on in Pennsylvania and a naval vessel wanted to get coal, and the coal did not come to it, the President would take the railroad and bring the coal from the mine to the naval vessel.

**MR. DOAK.** Yes; or do anything else while he had it.

**Senator BRANDEGEE.** But that would be clearly a case where the public safety would require it. Now, whether he ought not to have the power is a different thing; but under the bill he would have it, in my opinion.

**Senator CUMMINS.** But the difficulty is, Mr. Doak—as I say, I will not pretend to put an interpretation upon the bill, because I think it is drawn very obscurely, and I have not been able to suppress

the idea that it was intended to be rather obscure—that if the President wanted to transfer a crew from Chicago to New York in the case of a strike—and, of course, he could easily want to do that—and the Pennsylvania was not running on account of the strike, that he could take possession of the Pennsylvania and draft all these employees into the military service and perform the ordinary commerce of the country through the medium of an army of that kind. Now, I do not know whether that is intended or not.

Mr. DOAK. Well, it is suspicious looking, the way it is worded; and I just want to voice this protest against it, and say to you gentlemen that you should give very careful consideration, in my opinion, to that feature of it. We certainly are opposed, unalterably opposed, to it if the effect would be that any one man in this country could stop our purpose in that way and have a repetition of what happened in the Republic of France.

I will not take up any more of your time. I thank you. I just wanted to register this protest, and if I had thought you were going to close the hearings I would have tried to prepare something on this first.

The CHAIRMAN. You can add anything you want to on the subject and it will be printed.

(Thereupon, at 5.15 p. m., the committee went into executive session, and after the consideration of executive business, adjourned to meet at the call of the chairman.)





# GOVERNMENT INVESTIGATION OF RAILWAY DISPUTES

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## HEARING

BEFORE THE

## COMMITTEE ON INTERSTATE COMMERCE UNITED STATES SENATE

SIXTY-FOURTH CONGRESS

SECOND SESSION

ON

## THE TENTATIVE BILL

TO AUTHORIZE THE PRESIDENT OF THE UNITED STATES IN  
CERTAIN EMERGENCIES TO TAKE POSSESSION OF  
RAILROAD, TELEPHONE, AND TELEGRAPH  
LINES, AND FOR OTHER PURPOSES

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Printed for the use of the Committee on Interstate Commerce

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## PART 2



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# GOVERNMENT INVESTIGATION OF RAILWAY DISPUTES.

THURSDAY, JANUARY 18, 1917.

UNITED STATES SENATE,  
COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The committee met at 10.30 o'clock a. m., at room 326, Senate Office Building, Senator Francis G. Newlands (chairman), presiding.

Present: Senators Smith, Pomerene, Robinson, Cummins, Townsend, Poindexter, and Brandegee.

The CHAIRMAN. Gentlemen, we have had under consideration a tentative bill to authorize the President of the United States, in certain emergencies, to take possession of railroad, telephone and telegraph lines, and for other purposes.

The bill is as follows:

A Bill To authorize the President of the United States in certain emergencies to take possession of railroad, telephone, and telegraph lines, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in case of actual or threatened war, insurrection, or invasion, or any emergency requiring the transportation of troops, military equipment, and supplies of the United States, the President of the United States, when in his judgment the public safety may require, is hereby authorized to take possession in whole or in part of any and all telephone and telegraph lines in the United States, their offices and appurtenances; to take possession in whole or in part of any or all railroad lines in the United States, their rolling stock, offices, shops, buildings, and all their appendages and appurtenances; to prescribe rules and regulations for the holding, using, and maintaining of the aforesaid railroad, telephone, and telegraph lines, or that portion of the same of which possession may be taken, in the manner most conducive to the safety and welfare of the United States; to draft into the military service of the United States and to place under military control any or all of the officers, agents, and employees of the railroad, telephone, or telegraph companies whose lines are so taken into possession; and said officers, agents, and employees shall be thenceforth considered as members of the Military Establishment of the United States, subject to all the restrictions imposed by the rules and articles of war.

SEC. 2. That the draft of the officers, agents, and employees of the said railroad, telephone, and telegraph lines shall be accomplished upon proclamation by the President declaring the occasion therefor, requiring all the officers, agents, or employees of any railroad, telephone, or telegraph company therein named to submit themselves to draft, and directing such officer or officers of the Military Establishment as he may select for the purpose to prepare, either by designation or by lot, as may be most expedient, a roster or rosters of the individual officers, agents, or employees so to be drafted. Upon the making of such roster or rosters notice shall be given to each person so enrolled of the place where and the time when he shall appear and enter upon his service; and any person who shall in any manner willfully evade the receipt of such notice, or who shall fail to present himself for duty at the time named therein, or within such time thereafter as may be necessary to accomplish his journey to the place appointed by the most expeditious route, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, in the discretion of the court.

SEC. 3. That the communication of intelligence over said telephone and telegraph lines and the transportation of troops, equipment, military property, and stores throughout the United States shall be conducted under the control and supervision



of such officers as the President may designate; and whenever in his opinion the public safety no longer requires the continued possession by the United States of the said railroad, telephone, and telegraph lines the same shall be restored to the possession of the owners thereof, and the officers, agents, and employees drafted into the Military Establishment of the United States shall be discharged from further duty thereunder unless reenlisted in the manner and for purposes otherwise provided by law.

SEC. 4. That the damages suffered or the compensation to which any railroad, telephone, or telegraph company may be entitled by reason of the seizure and use of any portion of its lines or property under the authority conferred by this act shall be assessed and determined by the Interstate Commerce Commission, due regard being had to the terms of any acts of land grant or contracts theretofore existing between any such company and the United States. And for the purpose of such assessment and determination the Interstate Commerce Commission is hereby vested with all the powers which it has now or may at the time be authorized by law to exercise in investigating and ascertaining the justice and reasonableness of freight, passenger, express, and mail rates, and in investigating and ascertaining the value of property owned or used by common carriers subject to the act to regulate commerce as amended. The finding by the Interstate Commerce Commission of the amount of such damages or compensation shall be final and conclusive, and the same shall thereupon be paid by the Secretary of the Treasury out of any funds in his hands not otherwise appropriated. All officers, agents, or employees of any railroad, telephone, or telegraph company who may be drafted into the Military Establishment of the United States hereunder shall, during the time that the United States is so in possession of the said railroad, telephone, or telegraph line, receive for their services rendered in connection with the use of the same such compensation as they were theretofore accustomed to receive for similar services.

SEC. 5. That any person or persons having in possession any portion of the railroad, telephone, or telegraph lines aforesaid, or the property thereunto appertaining, who shall refuse to surrender the same to the possession of the United States upon order of the President, or who shall resist or interfere with the unrestrained use by the United States of the property so taken into possession, or any portion of the same, and who shall injure or destroy or attempt to injure or destroy the property aforesaid, or any part thereof, while in the possession of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both, in the discretion of the court.

I presume, Gen. Crowder, you have seen that bill, have you not?

Gen. CROWDER. Yes, sir.

The CHAIRMAN. The committee wishes to have the advantage of your judgment with reference to the law on this subject. We shall therefore be glad to hear from you.

#### **STATEMENT OF BRIG. GEN. ENOCH CROWDER, JUDGE ADVOCATE GENERAL, WASHINGTON, D. C.**

Gen. CROWDER. I had your letter, Mr. Chairman, requesting me to express my views as to the power of Congress to authorize the Executive to take possession of railroads and to draft into the military service for the operation of same all civil employees.

You requested an examination of the pending bill. I have given the pending bill such examination as it has been possible to give it in the limited time I have had to go over it. I do not want the committee to think from the fact that I have brought some books and memoranda here that I am prepared to make an exhaustive discussion at this time of the questions which arise under this bill. I think, however, from my preliminary study that I am able to state the questions, and to indicate a view, and I am in a better condition to respond to any further requests of the committee for any special memoranda illustrating any particular phases of the general subject which you have before you.

I have found the propositions novel rather than difficult. I entertain no doubt from my preliminary study that Congress has the power to enact this legislation, conferring upon the President the authority that is here sought to be conferred upon him, to seize or impress into belligerent or military uses the physical property of these railways, and also to draft into the military service for their operation their personnel.

I have been materially aided in the study of the bill by the examination of antecedent legislation which this bill follows very closely. On January 31, 1862, Congress enacted a bill almost identical with this bill. It provided for the seizure of railways; it provided for placing under military subjection and under the restrictions of the Articles of War of the railway personnel. That bill embraced all telegraph lines. This bill is broader in that it includes telephone lines as well. The War Department issued an order taking possession of the railways during the Civil War period. It never had to execute the law or the order in any loyal State. The bill and the order received execution only in territory militarily occupied or belligerent territory, and there, I take it, the department and the Executive did not need the authority of this legislation, for it could have proceeded with all proper legal sanction under the war power in territory militarily occupied.

Senator BRANDEGEE. You mean hostile?

Gen. CROWDER. I mean territory like the State of Tennessee.

Senator BRANDEGEE. Not the loyal States?

Gen. CROWDER. Not the loyal States.

Senator CUMMINS. Did the order embrace the entire country?

Gen. CROWDER. The order embraced the entire country, and the legislation embraced the entire country.

There are some differences between the two acts, and I have a memorandum here that will be convenient to refer to in stating them. The pending bill incorporates all the provisions of the act of 1862, with the following modifications: It adds telephone lines; it requires preliminary to the draft of the personnel a proclamation by the President reciting the reasons therefor, and directing the preparation of a roster of persons to be drafted, and a notice to the persons enrolled of the place and time they are to appear. These matters, under the act of 1862, were left to Executive regulation. The pending bill punishes by fine of \$1,000 and imprisonment for one year, or both, to be imposed by a civil court on any person who evades the receipt of notice or fails to respond thereto, whereas, under the act of 1862 the order of the President was effective to place these men in the military service, and their punishment was by a court-martial, at the discretion of a court-martial.

The pending bill provides that damages and compensation are to be fixed by the Interstate Commerce Commission, while the act of 1862 permitted it to be fixed tentatively by a board of commissioners, three in number, with the requirement that they should submit their tentative award to Congress for approval.

The pending bill fixes the compensation of drafted personnel of the railways at what they were accustomed to receive for civil services. The act of 1862 was silent in that regard.

The pending bill provides that when public safety no longer requires the continued possession of the seized lines, they shall be

restored and the personnel discharged, unless reinlisted for purposes otherwise provided by law. The act of 1862 was not to be in force any longer than necessary for the suppression of the rebellion.

The pending bill proceeds in respect of seizure apparently under the doctrine of eminent domain. The act of 1862 proceeded under the war power, as I read the bill.

Now there are two phases of the question which invite our attention. As I say they are more novel than difficult. One is the impressment of private property for belligerent or military uses, and the other is the impressment of personal services.

Speaking first with respect to the authority of Congress to enact this draft of personnel. I do not think that it has been open to question since the Civil War period, that that power exists in the most plenary form. Congress enacted in 1862, July 17, its first draft act. That was a draft of militia. In 1863 it enacted its second draft act. That was the general draft act under which we could get personnel for any kind of a force maintained during that period. Both acts were vigorously assailed on the ground of unconstitutionality, and both acts were judicially tested, and in both instances the courts responded in a very firm way, asserting this power and its plenary character. We have also the conscript laws of the Confederacy. They preceded ours in time of enactment and they likewise were vigorously assailed in the courts on the ground of unconstitutionality. The supreme courts of four of the Southern States responded with opinions that were exceptionally well considered, extremely able, and they maintained with corresponding firmness the power of the Confederate Government to impose this draft, I think with even greater firmness than the Federal courts. They leave us in no doubt about the power of the Government to enforce an unapportioned draft. They leave us in no doubt about the power of the Government to enforce a draft for noncombatant service as well as for combatant service. The clauses of the Confederate Constitution respecting the raising of armies were identical with those of the Federal Constitution, so that the courts were considering the same grant of power in both cases.

I am not prepared now to take up the decisions of the courts, except to say that the supreme courts of Alabama, Georgia, Virginia, and Texas considered the constitutionality of the Confederate conscript acts, and the courts of Pennsylvania and the United States District Court of Pennsylvania considered the Federal draft acts. Their opinions leave me in no doubt about the authority of Congress to enact so much of this law as relates to the impressment or draft of personal services of a noncombatant character, such as is proposed in the pending bill.

In respect of the draft or impressment of private property for belligerent and military uses, this bill proceeds under the doctrine of eminent domain, and, as I have remarked before, in that respect differs from the act of 1862, which proceeded under the war power of Congress. I reach his conclusion because in the pending bill you have provided for vesting in the Interstate Commerce Commission final jurisdiction in the matter of assessment of damages sustained by the railroad companies, telegraph companies and telephone companies incident to their seizure and use, and authorize the payment of those damages out of any moneys not otherwise appropriated. In all material respects the procedure in condemning property in

time of peace is observed. 'That was not the case under the act of 1862. Congress made the award in the final instance by approving or modifying the report of a board of three members.

Upon that point whether the legislation that you enact should proceed under the doctrine of eminent domain or under the war power I am in doubt. Certainly if you proceed under the doctrine of eminent domain you establish a precedent that ought to be applied, if we are to have uniform treatment of owners, to all private property which may be seized and appropriated for a belligerent or military use. I doubt if it is necessary for you to seek your authority in the doctrine of eminent domain, and I am a little afraid of the precedent established from the point of view of the expense incident thereto in a war of great magnitude.

No one questions the authority of Congress to draft uncompensated military service. Upon principle, I think, no one should doubt the authority of Congress to subject private property to uncompensated use. I doubt if the Bill of Rights restrains you in this regard. I doubt very much whether the provision of the Constitution that private property shall not be taken except upon just compensation necessarily applies to any of those emergent takings in time of war. You do not doubt the authority of Congress to enact a law which would quarter troops in time of war in private houses without compensation to owners. I take it nobody doubts that authority. You do not doubt the authority to destroy property which obstructs the field of fire, as was done at Knoxville during the Civil War, without compensation to the owners; and even in the exercise of the police power you do not recognize the principle that compensation must be made to persons whose property is destroyed to arrest a great conflagration. I think it is a very serious question whether or not we should not proceed under the war power and leave everybody whose property is taken to be compensated as an act of grace on the part of the Government and not as a matter of constitutional obligation.

My preliminary view of the question leads me to express those views. As I say, I have not given the subject exhaustive study.

Senator BRANDEGEE. May I ask a question there, Mr. Chairman?

The CHAIRMAN. Yes.

Senator BRANDEGEE. This bill gives this power to the President to be exercised in the time of threatened war and also in times of peace, as I read it, if the public safety in his judgment requires the taking of the railroads. What, in your opinion, if any, is the relation between the constitutional provision that the right of appeal to the courts shall not be suspended except in time of invasion, or similar language, with relation to the impressment of these men in times of peace to this merely transportation service?

Gen. CROWDER. The matter of drafting personal service is to be implied from the grant of Congress to raise armies. The difference between the express mention and the authority which is necessarily included in a grant in general terms is involved.

Solicitor General DAVIS. Not only so, if I may interject there, but if I understand the writ of habeas corpus only releases from unlawful confinement, and if you once concede the premise that this particular draft is lawful in character, of course the writ of habeas corpus would not release from that service.

Senator BRANDEGEE. It is going around in a circle to say that, because the object of my question is to determine whether it is a lawful exercise of power in time of peace. He is basing it upon the war power of Congress. If there is no war, and the country is as peaceful as it is to-day and the President wants to transport 10,000 men from New York to the Philippine Islands, and there happens to be a strike of the men on the railroad, then, proceeding under the war power—and I assume that he will not proceed under the war power except in times of war or threatened war—what authority has Congress to order the impressment of strikers to compel them to operate a transportation service.

Gen. CROWDER. In the first place, I would like, before I proceed directly to respond to your inquiry, to call your attention to the language of this bill. It says that "in case of actual or threatened war, insurrection, or invasion, or any emergency requiring the transportation of troops, military equipment and supplies of the United States, the President of the United States, when in his judgment the public safety may require," can do these things. It does not say "in like emergency;" and I was in some doubt as to what interpretation the bill would require in that form. Reading in the light of the request of the President to Congress for this legislation, and interpreting the legislation as a response to that request and not intended to exceed the request, I think the emergency should be construed as a war emergency. But this language, standing alone, does not require that construction, in my judgment.

With respect to the power of the Government to take possession of railroads in time of peace—we will assume an emergency has arisen which is a peace emergency—and to its power to draft the personnel for the operation of the same, I do not get much further in my study of the question than this: May the Government engage in commerce? I think the courts have answered that question in the affirmative. If it may, it can condemn property for such purpose; and, having acquired possession, under the terms of this act, of the property, the single question remains: May it draft personnel, or can there be such a thing as civil conscription? I have been very much entertained by some comments in the Harvard Law Review, which came to my desk yesterday, and which seemed to answer the question in the affirmative.

Senator BRANDEGEE. What issue, General?

Gen. CROWDER. The latest issue, January, 1917.

Senator CUMMINS. Before you go to that, if I may develop a little the question put by Senator Brandegee, laying aside the language of the bill and not concerning ourselves with just what it means, do you believe that in the time of peace at which the President wanted to transport a regiment of troops from New York to Chicago, if there were a strike on the Pennsylvania Central Railroad, that he could take possession or that we could give him authority to take possession of the Pennsylvania Central or its property and impress all of its employees into service to operate that road as a commercial instrumentality?

Gen. CROWDER. No one can answer your question, Senator Cummins, from the standpoint of authoritative judicial precedent. The article to which I was about to call your attention suggests the existence of that power. I will only present extracts from it.

Senator ROBINSON. What is the date of that publication?

Gen. CROWDER. January, 1917.

Senator CUMMINS. I am not proceeding under the authority of power to regulate commerce. I have not any doubt about the authority of the Government to buy the Pennsylvania Central Railroad or condemn it and operate it for all time without regard to peace or war. But I do not believe myself that when we proceed to acquire a road under the power to regulate commerce, we could draft the citizens of the country into the service of the United States for operation of that road and subject them to the Articles of War.

Gen. CROWDER. That answers the question more definitely than I was prepared to answer.

Senator ROBINSON. Why would not that proposition involve involuntary servitude?

Gen. CROWDER. It would not in principle constitute involuntary servitude any more than compulsory work on the roads.

Senator POINDEXTER. Senator Brandegee raised a question which was discussed here some days ago as to the application of the writ of habeas corpus, but I do not think that is involved. I do not think the question of the writ of habeas corpus is involved, for this reason, that it is not proposed in this legislation that the President shall suspend the writ of habeas corpus. The writ of habeas corpus is merely a procedure. A man confined has a right to be brought into court and have the question of the legality of his imprisonment determined by the court.

Senator BRANDEGEE. Precisely.

Gen. CROWDER. And that is not taken away.

Senator BRANDEGEE. Of course, in time of war the writ of habeas corpus would be suspended. In time of peace, when it could not be suspended and they sought to draft these men into the military service of the United States under restrictions of articles of war and they should be considered, for all intents and purposes, soldiers of the United States, might it not be a different proposition? Suppose in times of peace the War Department proposed the transporting of some supplies from New York to the Presidio garrison in San Francisco. There is a strike on. A man brings an application for a writ of habeas corpus when he is arrested for refusal to serve, and questions of the constitutionality of the law would come up immediately. That is what I want Mr. Davis and Gen. Crowder to discuss.

Solicitor General DAVIS. I think his right to that procedure would be absolutely undisturbed by this bill, but the result of it would depend on the legality of the act.

Senator CUMMINS. Do you believe the Government could draft men as clerks in the Interior Department in time of peace?

Gen. CROWDER. I will have to make the same answer that I suggested a while ago, that there is no authoritative judicial precedent supporting that view, but that such discussion as we have had of it suggests the existence of the power.

Senator TOWNSEND. Will that appear from what you were about to read?

Gen. CROWDER. I will read briefly. The notes start out with the statement—

That the State may, in case of necessity, compel its citizens to do military service is consonant with our ideas both of common and of constitutional law. That the

satisfaction of any civil need of the State may likewise be compelled, however, is a conception new to us, and one that will be regarded by most lawyers with instinctive hostility. But this compulsion, which, in lieu of a better term, may be called civil conscription, is, it is submitted, settled in practice and sound in principle. The service, both military and civil, which the feudal system exacted had a larger warrant than any theory of land tenure could give, in the inherent right of the State to safety and to preservation. The real basis of the conscription is the necessity of the State, and accordingly the considerations of liberty of the individual and of equality of treatment must be wholly subordinated to that. That the State may need civil service equally as much as military is obvious. Both kinds of service are essentially alike, for both sacrifice the individual to the nation's welfare with the same clear purpose. And not only are military conscription and civil conscription identical in nature, but also the difference in form between them may be imperceptible. The common law is, then, that any service whatever, whether military or civil, which the State requires, it may exact of its citizens.

Then the author proceeds to illustrate.

Senator CUMMINS. Are there any authorities cited under that?

Gen. CROWDER. Yes; quite a number of them.

Senator CUMMINS. In this country?

Gen. CROWDER. Yes. The authorities cited are mainly textbooks, but there are a few decisions of courts.

Senator BRANDEGEE. Who is the author of that?

Gen. CROWDER. I suppose the editor of the Review.

Senator ROBINSON. Will you let the citations go into the record?

Gen. CROWDER. I will hand a memorandum of them to the clerk, that he may incorporate them in the record. I have not had time myself to examine these decisions. I only saw the report yesterday.

The CHAIRMAN. How long an article is it?

Gen. CROWDER. It is only a page or two long. The notes extend the article considerably, but there is not more than a page or two of comment.

The CHAIRMAN. You may insert it in the record, Mr. Reporter, at the close of Gen. Crowder's statement.

Gen. CROWDER. Then the article refers to the common-law obligation of a man to hold office and discharge the duties of office, and says:

A recent California case suggests the possibility of a still further infringement on the liberty of the individual, raising the problem whether the State may compel a man to run for office after he has been nominated, and the even more important question, whether it may compel him to seek the nomination in the party primaries which statutes have now generally established.

Senator CUMMINS. I hardly supposed any such question could ever arise in America.

Senator ROBINSON. That question that a man can be compelled to seek a nomination at the party primaries rather discredits the argument, to my mind, because if that is true I do not know what individual liberty means.

Gen. CROWDER. I did not suppose that part of the article would challenge your serious attention. It is simply introductory to what I did think merited your attention. The article also refers to compulsory jury service and compulsory attendance of witnesses, and then proceeds:

Where there is need the State may, at common law, conscript citizens to form a posse, to assist in making arrests, to report cases of contagious disease, to extinguish conflagrations, and even to serve in a permanent fire department.

## Citing cases and authorities for each of those statements—

Attorneys may be compelled to defend poor persons in courts of law. It is clear that in any emergency, whether one that has arisen in the past or not, citizens may be conscripted to avert danger to the State.

## Further on:

The limitations on civil conscription which are peculiar to the United States are likewise few. The sixth amendment to the Constitution of the United States expressly provides for compulsory witness service in certain cases. Conscription to serve the State's needs is neither slavery nor involuntary servitude, within the meaning of the thirteenth amendment.

Citing *Butler v. Perry* (240 U. S., 328):

And although a citizen's right to dispose of his own labor as he desires has been construed to be included both in "liberty" and in "property" as used in the fourteenth amendment, yet conscription by the State has never been regarded as a deprivation of either liberty or property, since it is a general burden and inures to the general welfare.

That is the part to which I wanted particularly to call your attention.

SENATOR POINDEXTER. Was this act of 1862 limited in its terms as to the period it would be in effect?

GEN. CROWDER. Yes. It was limited to the period of the War of the Rebellion.

SENATOR POMERENE. It also applied to military service.

GEN. CROWDER. Yes, military service.

THE CHAIRMAN. Will you give the reporter, to put in the record, a reference to the act of 1862?

GEN. CROWDER. The reference is the act of January 31, 1862, Twelfth Statutes, 334.

It is fair to say, in connection with the general subject, that the two acts of the Civil War period imposing military drafts provided for apportioned drafts. But Congress has not always legislated on the theory that it was necessary to distribute the burden of a draft.

The first act we had for calling out the militia was the act of 1795—essentially a draft act. That act gave the President authority to call, in case of invasion, the militia of the States nearest the points of danger or the scene of action, and in case of insurrection within the State the militia of any other State. No apportionment was required. That remained the law down to the time of the enactment of this legislation of 1862 and 1863, which required the burden of the draft to be distributed according to a representative population. But when Congress came to enact the Dick law in 1903 it was made discretionary with the President whether he would apportion the draft. The national-defense act recently adopted contains two sections bearing upon conscription. Neither requires the draft to be apportioned. One is a purely selective conscription—designates the National Guard to be conscripted, without any reference to apportionment among the arms-bearing population. The other requires conscription of recruits but says not a word about apportioning the draft; so that legislatively we are not committed to the principle that a draft has to be apportioned.

THE CHAIRMAN. Are these acts that you refer to of any length?

GEN. CROWDER. Yes.

THE CHAIRMAN. Could you give us a reference to them?



Gen. CROWDER. Yes. I will supply the clerk of your committee with a reference to them before I leave the committee room.

[NOTE.—The two acts are the act of July 17, 1862, 12 Stat., 597, and the act of Mar. 3, 1863, 12 Stat., 731.]

So I find no difficulty with the act because it selects the railway personnel and drafts them into military service. I find no difficulty with any selective conscription.

Senator BRANDEGEE. You think, then, as the result of what you have said and your more or less cursory examination and suggestions from these notes in the Harvard Law Review, that, first, it is your idea, whenever the President thinks it is in the interest of the public safety to supply the United States agencies, he can take possession of the road and draft the men, if they be on strike, to transport military supplies and troops of the United States; and then, secondly, can he also operate the road commercially, which would result in breaking the strike?

Gen CROWDER. I feel that the act as drawn requires that interpretation—that he may seize the road and draft the personnel in the contingency you have stated. As to the further question whether, as an incident to taking over of the roads for emergent uses, he may operate them commercially, I have not reached a final conclusion, but I am inclined to think it is within the general power he has after seizure for a military use to use them commercially.

Solicitor General DAVIS. You do not think this particular bill confers on him that commercial power?

Gen. CROWDER. It certainly does not in express terms.

Senator BRANDEGEE. If that is your view of it—and of course we are simply expressing present opinions now and more or less groping; so far as I am concerned—do you think that under the terms of the present bill if he took it to transport supplies and troops, that he could fill up the balance of a train and hook on freight cars to transport stuff that was simply interstate commerce, and keep it up for a long time, which would result in breaking the strike?

Gen. CROWDER. As I have said, I have not reached any definite conclusion on that question.

Senator BRANDEGEE. I have not, either. It seems to me, if it proceeds upon the theory of the necessity or public safety of the United States, so far as the operation of its governmental functions are concerned, there may be some question whether there is anything in the bill, so far as you view it, to exclude it from operating commercially once he has taken possession of it and the cars are running.

Gen. CROWDER. I think that we are not embarrassed by any provision of the bill in reaching the conclusion that he might have this power as incident to operating them for emergency purposes, for which they were seized.

Senator BRANDEGEE. Can that power be conferred by Congress?

Gen. CROWDER. It can if there can be civil conscription in the terms I have read from the Harvard Law Review.

Senator ROBINSON. If the Executive should have possession of the railroads and be operating them, commerce would be suspended if they were not operated for commercial purposes; so it would seem absolutely necessary to permit the operation for commercial purposes by the Executive; otherwise the commerce of the country might be suspended.

Gen. CROWDER. And you would exchange one emergency for another that might be graver than the one sought to be remedied.

The CHAIRMAN. Your interpretation of these words "or any emergency requiring the transportation of troops, military equipment, and supplies of the United States," is that they would apply to a case where there is no actual or threatened war or insurrection or invasion? It might be a time of profound peace.

Gen. CROWDER. I say the language of the bill admits of that interpretation; but you can read limitations into it if you assume that it is responsive to the President's request for legislation. I do not think he asked in terms for so broad a bill.

Solicitor General DAVIS. Or you might also, if I may interject, read in the doctrine of *sui generis* and hold that it refers to emergencies of the same general character that have previously been particularized. I am inclined to think the court would read it in the light of that doctrine.

Senator CUMMINS. Do you think the necessity of dispatching, in time of peace, of a train a month for the purpose of carrying troops could be the object of the legislation, and the dispatching of 5,000 trains in the same time carrying commerce only could be reckoned as an incident? Do you not believe the courts would at once penetrate any disguise of that kind and simply say that the road had been taken possession of for the purpose of doing the business of the country?

Gen. CROWDER. I do not think you would be compelled to measure the incidental relation of the business by the volume of it.

Senator CUMMINS. It is perfectly feasible to commandeer a train without taking possession of the road.

Gen. CROWDER. The President would have that authority under this bill, for the language is "in whole or in part."

Senator CUMMINS. Without expressing any opinion as to the power involved, I have a very clear idea that the courts would not be satisfied with the form. They would look to the substance of the situation.

Senator BRANDEGEE. The substance of it, Senator, would be this, that under the bill if there is a strike called on all the roads between New York and San Francisco, the President, for the purpose of supplying the Army with supplies, could take possession of the entire road and all its officials and property. If he undertook simply to use it for military purposes and to supply the Army and Navy of the United States, then he has excluded commerce and the owners of the road and the directors have been ousted or are simply themselves soldiers of the United States, obeying the orders of the President, and the commerce of the country is strangled by that exclusive use. In other words, the strike is worse than it ever was before, because the Government is on strike now, strangling the country of its commerce and obstructing interstate commerce. All that was necessary for military purposes was the operation of one freight train a day, possibly, or a week. There are thousands of these trains to be operated, and unless they could operate them in their commercial relations as well as for military purposes, you have produced that condition. If, on the other hand, the Government under this bill can take the road and operate it commercially and draft these men into service, it can do it for 10 years, in my judgment. The

minute it stops, the strike is resumed and the same situation, which you pass the bill to prevent, is again created.

Senator CUMMINS. The substance of it would be a bill authorizing the President to take possession of the railroads of the country in the event of a strike or threatened strike, and hold them always, to carry on the traffic of the country, because it is easy enough to find that a train now and then, even in time of profound peace, would be necessary to carry troops or carry supplies. If we intend to do that, I would like to put it in squarely, so everyone can understand that we are doing just that thing.

The CHAIRMAN. Are there any further questions?

Senator ROBINSON. General, if you have occasion to continue your investigations of this subject and have other conclusions which you think will be helpful, you would not hesitate to communicate them to us, would you?

Gen. CROWDER. Not if that is the desire of the committee, or any member of it.

Senator ROBINSON. It is my desire, and I presume it is the desire of the committee.

The CHAIRMAN. We shall be very glad to have you make any communication upon this subject.

Senator BRANDEGEE. I would like to ask you, general—I think this is rather a superfluous question, but I will ask it just the same—whether there is any law in existence on this subject at all at the present time?

General CROWDER. No.

Senator BRANDEGEE. Do you think there is a necessity that there should be one, from a military point of view?

Gen. CROWDER. I do, but I want to explain. I doubt very much if you enact this law if it will ever have any execution. I think the experience of the Civil War period will be repeated. The authority of this legislation hanging over the railroads and the telegraph lines and telephone lines will be sufficient to bring them into the most zealous compliance with the wishes of the War Department in the transportation of troops and supplies.

Senator BRANDEGEE. Do you think it will have that effect on the labor unions also?

Gen. CROWDER. You introduce an element I had not thought of in that connection. It had the effect I have stated in the Civil War period, but I presume that it was not a period of strikes. The strike situation was not at that time developed to the extent it is to-day.

Senator BRANDEGEE. I have assumed, if I may be pardoned for saying so, that the language particularizes supplies necessary for the military service, and that the other language, "or any emergency" where the President might think the public necessities or safety were threatened, was intended to cover those features, but that really the strike situation was in mind, because this bill was suggested in the President's message at the time he was recommending legislation to obviate the strike; and if it is, I want to know what I am about; and if it is, then my inquiry of you becomes pertinent whether the suggestion of the legislation would bring the labor unions into most cordial cooperation with the War Department if they happened to be on strike.

Gen. CROWDER. The precedent of the Civil War period would not cover that phase of your inquiry, and I would not know how to

answer it. I am not specially a student of strike situations, and I do not know as well as you do the attitude of labor toward questions like this, and I would hesitate to venture an opinion or suggestion, even, on the subject.

Senator SMITH. Is it the purpose of this proposed legislation to put the supplying of troops and the movement of troops in the same category with the mails, and limit it only to that, or is the scope of the bill to take cognizance of the public necessity arising out of the strike? I can see, differentiating commerce from military necessities, how we would not be in any worse fix or in any better fix in reference to military supplies than we are to-day in relation to the mails. In the strikes heretofore the mails were moved and strikers agreed to have no interference with mail carriers and with mail trains devoted wholly to the mails or the transportation of the United States mails. Under this legislation, as I take it, the expressed purpose is to put the military necessities, in times of peace, in the same category with the mails, so as to restrain them from interfering with the movement of troops or the supplying of them.

Gen. CROWDER. Of course, under the terms of this resolution you would have much ampler power respecting the movement of munitions and troops than you now have over the movement of mails. You can compel the movement of mails now because to obstruct them is obstructing the execution of a law of the Union, and you invoke the aid of the military to remove that obstruction. But that is not this proposition. This proposition takes possession of and operates the railways, the telephones, and the telegraph. It is a much broader power.

Senator POINDEXTER. And more direct.

Senator SMITH. But the idea I was getting at is to restrict it entirely to the military. Senator Brandegee suggested a moment ago that unless we take possession of them for a specific, clearly defined purpose and refuse to carry, while we have possession of them, the commerce of the country, then the United States Government would be on strike. I can not see how it could be any more applicable as a charge against the Government than it is now, when they force the movement of the mails. That is the transportation of a commodity. Suppose there were certain parcel post packages in the mails. They might contain commodities for general use. You move them, but you do not move the general freight commerce.

Senator BRANDEGEE. Suppose there is a strike in the coal mines and also on the roads, and the battle cruisers of the United States in port need coal. Under the language of this bill there is an emergency requiring the transportation of supplies of the United States, and the public necessity requires them to be transported. The President could take possession of the road—he could not take possession of the coal mines under this bill, although if Roosevelt were President he says he could do it anyway—and they could operate the coal mines and the railroads and suppress the strike. I am not assuming to say whether the strike ought to be suppressed or not, but we have hitherto rather refrained from having the Government go in and by grabbing the whole subject matter and operating the activity itself, have settled the difficulty by forces of the Government, and that is the situation I want to clear up, if I can get it cleared up.

The CHAIRMAN. General, what do you think of this view: I think it is a misnomer to say that the purpose of any of our legislation is to suppress strikes. The real purpose of our legislation is to secure the operation of trains in interstate commerce and to keep the channels of trade open. The public safety and public necessity are just as much involved in that, and possibly more involved in that, than the movement of troops in the face of a threatened war or an insurrection or an invasion, because the final result of such a lack of transportation would be simply chaos and destruction. So far as I am concerned, I want to pass some law that will fully meet that situation—not suppress strikes, but to prevent the suspension of the operation of trains. In this connection, of course, I am desirous of providing full methods for securing justice to the railway employees, not only as heretofore through mediation, conciliation, and voluntary arbitration, but also through governmental investigation and even through a fair tribunal with power to determine questions arising between railroads and their employees.

Senator BRANDEGEE. This bill does not pretend to touch that except where supplies of the United States are concerned.

The CHAIRMAN. It is possible that the language of this bill goes further than the President's message, which was limited, I believe, to the case of military necessity. Yet it does not go, as to their constitutional power, as far as I would like to go individually to prevent the suspension of transportation.

Gen. CROWDER. The bill leaves it to be argued that you get all of this benefit incident to the assertion of the power over the railroads for military and belligerent uses.

Senator TOWNSEND. In these decisions to which you have referred in the Federal courts of Pennsylvania during the war, did those matters go to the Supreme Court?

Gen. CROWDER. No.

Senator TOWNSEND. There has been no determination of this question, according to the limited investigation that you have been able to give it, of the power of Congress to do these things in reference to the impressment of civil employees, except when there is actual war in existence in the United States, when they were actually engaged in war.

Gen. CROWDER. The question before the Pennsylvania court, before the United States district court of that State, and before each of the supreme courts of the four Southern States which I have named was military conscription. The argument of the decisions sustains the proposition that the power exists in time of peace, because it is derived from the power to raise armies, and that power may be exercised in time of peace as well as in time of war. It is not any broader power in war than it is in peace.

The CHAIRMAN. Do you doubt at all the constitutional power to meet that question of public safety and public necessity in the way I suggested, by even a broader legislation than what we contemplate here?

Gen. CROWDER. It all depends on whether these observations I have read in regard to civil conscription are good law. I have not studied that side of the question and have no settled conviction upon it, but may say that the authorities I have cited suggest the existence of the power of civil conscription.

There is a point in connection with the pending bill that I think I am justified in bringing to your attention under the invitation extended to me a moment ago to suggest matters pertaining to the consideration of the bill.

I think it has been assumed by certain gentlemen who have spoken that there is power in the pending bill to compel the service for which the individual, railway, telegraph, or telephone employee, has been drafted. I do not find that power in the pending bill. It was in the 1862 act, but here in this bill it is provided that any man who evades notice or who refuses to present himself for service is to be fined \$1,000 or imprisoned for one year, or both, by a civil court. We had this question raised under the 1795 militia legislation, and the courts held very firmly that the payment of a fine imposed or the execution of imprisonment adjudged was a full atonement for the disobedience and a full equivalent of the service for which the individual had been drafted. So I doubt very much—the thought occurred to me as I was on my way to the committee meeting this morning—whether you can compel specific performance of service under the bill as you have it drafted.

The CHAIRMAN. What amendment would you suggest?

Gen. CROWDER. I would amend the bill so as to provide for subjection to the Articles of War from the date of notice and make them chargeable with notice when the call had been published in a certain way. That is the only way I know that you can bring them under military discipline; and then treat them as you would a soldier out at Fort Meyer who is absent without leave.

I think the bill has that defect, the same defect that has characterized the military legislation of this country for 100 years. It was not possible for the President to compel a militiaman under call to respond thereto and to perform service, either under the 1795 bill or under the Dick bill. The man could simply decline to serve, pay his fine, and serve his imprisonment, and never have to take his place in the ranks. It is different under the recently enacted national-defense act.

Senator CUMMINS. If a man chose to go to jail or submit to whatever punishment was put upon him, how could you compel him to stand up and drill?

Gen. CROWDER. I would wait until he served his term of punishment, and then treat him as I would a Regular soldier refusing to obey a proper order.

Senator CUMMINS. You can not compel him to do it through punishment.

Gen. CROWDER. You could keep on punishing him. You could not compel him to serve, but you could keep on punishing him until he would be glad to give up and serve.

Senator CUMMINS. That is a proposition that depends on the extent of the punishment, whether it is sufficient to coerce him.

Gen. CROWDER. Still he would no longer be assured that he could escape service absolutely by paying a fine.

Senator CUMMINS. Imprisonment for life would enable him to do it all right.

I think it best, under the invitation of the committee, to submit the following summarization of views entertained by me as the result of my preliminary study.

First. Assuming the only theory of the pending bill respecting the impressment of property to be found in the right of eminent domain, the bill is a correct interpretation of that principle. While it seems to be not within the authority of the legislative branch of the Government to determine what shall be the measure and elements of compensation of private property taken for public purposes, the question being nonlegislative in character (*Monongahela v. United States*, 148 U. S., 312-327), still Congress may prescribe the mode of procedure and may create a special tribunal, and as long as such tribunal is an impartial one and required to conduct the proceedings in a fair and just mode, both to the owner and the Government, there is no infringement of due process of law or other constitutional right. (*Bauman v. Ross*, 167 U. S., 548-598). Leaving all these questions, as the bill does, to be determined by the Interstate Commerce Commission, violates none of the constitutional restrictions regarding the right of eminent domain or the taking of property without due process, or the trial of facts by jury, but is indeed justified by the authorities and in line with long-established Federal legislative precedent.

Second. But during war or the imminence thereof Congress may subject private property to its belligerent use and find a source of authority therefor in the war power rather than in the doctrine of eminent domain.

Third. While Congress may resort to the power of eminent domain, and incur thereby the constitutional obligation to make just compensation for private property, it may, by the exercise of its war power, achieve the same result and avoid the constitutional obligation.

Fourth. The war power, if exercised to the end of subjecting service and property of our citizens to the Government's belligerent use, finds no limitation in the Bill of Civil Rights.

Fifth. In the present state of the law, it being uncertain whether the Government is compelled to resort to the power of eminent domain to subject to its belligerent uses such railway, telegraph, and telephone systems, it is suggested it might be unwise to use language committing Congress to the eminent domain theory, since thereby it might be committed to a precedent which in a long and trying war might prove embarrassing.

(The article from the *Harvard Law Review* referred to by Gen. Crowder is as follows:)

#### CIVIL CONSCRIPTION IN THE UNITED STATES.

That the State may, in case of necessity, compel its citizens to do military service, is consonant with our ideas both of common and of constitutional law. That the satisfaction of any civil need of the State may likewise be compelled, however, is a conception new to us, and one that will be regarded by most lawyers with instinctive hostility. But this compulsion, which, in lieu of a better term, may be called civil conscription, is, it is submitted, settled in practice and sound in principle. The service, both military and civil,<sup>1</sup> which the feudal system exacted, had a larger warrant than any theory of land tenure could give,<sup>2</sup> in the inherent right of the State to safety

<sup>1</sup> For the heavy civil duties attached to villein tenure, see Pollock and Maitland, *History of English Law*, 2d ed., 370, 372.

<sup>2</sup> Military service was exacted even of those who held no land. Maitland, *Constitutional History of England*, 162.

and to preservation.<sup>1</sup> The real basis of the conscription is the necessity of the State, and accordingly the consideration of liberty of the individual, and of equality of treatment, must be wholly subordinated to that. Thus, even a capricious and sometimes deliberately unequal conscription has been lawfully practiced in England for centuries, in impressment for the Navy.<sup>2</sup> That the State may need civil service equally as much as military is obvious. Both kinds of service are essentially alike, for both sacrifice the individual to the Nation's welfare with the same clear purpose. And not only are military conscription and civil conscription identical in nature, but also the difference in form between them may be imperceptible.<sup>3</sup> The common law is, then, that any service whatever, whether military or civil, which the State requires, it may exact of its citizens.<sup>4</sup>

It is, however, true that comparatively few instances of civil conscription are recorded in the books.<sup>5</sup> The classic example is the holding of public office. The resignation of any public officer is effective only at the will of the sovereign.<sup>6</sup> And one duly elected to office may be compelled to accept the place and to perform its duties.<sup>7</sup> A recent California case<sup>8</sup> suggests the possibility of a still further infringement on the liberty of the individual, raising the problem, whether the State may compel a man to run for office after he has been nominated,<sup>9</sup> and the even more important question, whether it may compel him to seek the nomination in the party primaries which statutes have now generally established.<sup>10</sup> It is submitted that in both of these cases such compulsion may be lawful, since there well may be a public interest sufficient to warrant it.<sup>11</sup> The Conscrip Fathers may be conscript in fact.

<sup>1</sup> This right has been consistently recognized both in England and in the United States. See *Rex v. Larwood*, 1 Salk. 167, 168: "The King hath an interest in every subject, and a right to his services." Cf. *Lanahan v. Birge*, 30 Conn. 438, 443: "It is a fundamental principle of national law, essential to national life, that every citizen . . . is under obligation to serve and defend the constituted authorities of the state and nation . . . when such service is lawfully required."

In 1642 Parliament and King Charles disputed concerning the King's right to conscript without Parliament's consent. See A Declaration of the Lords and Commons Assembled in Parliament upon the Statute of 5 H. 4, Whereby the Commission of Array is Supposed to be Warranted: Together with Divers Other Statutes . . . as also His Majesties Letter to the Sherif of Leicestershire to Execute the Said Commission According to His Majesties Proclamation. This contains a full inquiry into the early military conscriptions. Said King Charles (p. 20): "And considering that in ancient time the Militia of the Kingdom was ever disposed of by Commissions of Array . . . We have thought fit to refer it to that ancient legall way . . . authorizing you to Array and traine our People, and to apportion and assesse such persons as have estates and are not able to beare Armes, to find Armes for other men . . . and to conduct them so Arraid. . . ." To which Parliament replied (p. 9) that the Petition of Right forbade the King to impose any "tax or charge" upon the people without Parliament's consent.

<sup>2</sup> May, Constitutional History of England, 137-40. Cf. with the necessity for compensation, note 24, *infra*. For the formation of contracts of labor by persons without means of support, which English statutes compelled as late as 1875, see Freund, The Police Power, § 448.

<sup>3</sup> Is the "home service" conscription now being instituted by Germany, military or civil in form? And how are we to class the conscription provided for by the British "man-power" bill, at the present moment under debate by Parliament? Cf. the operation of the railways of France by the railway employees in their capacity of conscripts, which was threatened by the French government in 1910, to avert a strike. *Journal Officiel de la République Française*, 8395 (12 Octobre, 1910); Rouchy, *Les Grèves dans les Chemins de fer*, 61; see 96 Outlook 474 (October 29, 1910).

<sup>4</sup> See the great opinion of Shope, J., in *People ex rel. German Ins. Co. v. Williams*, 145 Ill. 573, 582, 583, 33 N. E. 849, 852, approved in 7 Harv. L. Rev. 186. Cf. 1 Blackstone, Commentaries (Sharswood), \* 138, to the effect that the sovereign may require of the subject anything that does not necessitate the subject's exile from the realm.

<sup>5</sup> See Freund, The Police Power, § 613.

<sup>6</sup> *Edward v. United States*, 103 U. S., 471. This common law principle prevails in the United States despite the fact that here "public offices are sought rather than shunned." A recent English dictum stands alone in questioning the application of this principle to statutory offices. See Bray, J., in *Rex v. Sunderland Corporation*, [1911] 2 K. B. 458, 464.

<sup>7</sup> *People ex rel. German Ins. Co. v. Williams*, *supra*. Not only will mandamus lie against the person elected, to compel the performance of the duties of the office, but also his failure to accept the office constitutes an indictable offense.

<sup>8</sup> *Bordwell v. Williams*, 52 Cal. Dec. 267, 159 Pac. 869, discussed in 5 Cal. L. Rev. 77.

<sup>9</sup> The candidate can not withdraw after nomination, under most primary statutes. Cf. *State ex rel. Donnelly v. Hamilton*, 33 Nev. 418, 111 Pac. 1026, with *Elswick v. Ratliff*, 166 Ky. 149, 179 S. W. 11. It is submitted that such statutory prohibitions are merely expressive of the state's need, and not enlargements of the common law.

It should be noticed that withdrawal, like resignation from office, may be considered to involve another element than State conscription, in the individual's prior consent to hold the office or to have his name upon the ballot. That, however, is not the real ground of these decisions.

<sup>10</sup> There are apparently no cases as yet which squarely decide this point. For the candidate's power to withdraw after his name has gone on the primary ballot, under statutes with similar and rather technical provisions, see *Bordwell v. Williams*, *supra*, and *State ex rel. Thatcher v. Brodigan*, 37 Nev., 458; 142 Pac., 520.

<sup>11</sup> The public interest which may warrant the conscription of candidates is the identical interest which has established the direct primary. The primary statutes make the nominee even in form a public officer and the nomination a public office. *Johnston v. Board of Elections of Wake County*, 90 S. E. 143 (N. C.). See also 26 Harv. L. Rev., 351. It would seem that candidacy, even before it has ripened into nomination, also might be a public office.



Another continuing public duty whose compulsory performance has been urged<sup>1</sup> is the exercise of the suffrage. The only attempt that has yet been made in any common law jurisdiction to establish compulsory voting has been held unconstitutional as a compulsion of an act of sovereignty.<sup>2</sup> Compulsory jury service has existed almost as long as juries have.<sup>3</sup> So, too, witnesses have been compelled to appear;<sup>4</sup> and labor upon public roads has been conscripted,<sup>5</sup> from the beginnings of the common law until the present time. Wherever there is need the State may, at common law, conscript citizens to form a posse, to assist in making arrests, to report cases of contagious disease, to extinguish conflagrations,<sup>6</sup> and even to serve in a permanent fire department.<sup>7</sup> Attorneys may be compelled to defend poor persons in courts of law.<sup>8</sup> It is clear that in any emergency, whether one that has arisen in the past or not, citizens may be conscripted to avert danger to the State.<sup>9</sup> Compulsory arbitration, involving conscription for a limited period, may likewise be instituted, as has been done by recent legislation in this country.<sup>10</sup> Nor is there any need for compensation, at common law, for any service thus compelled by the State.<sup>11</sup>

There are, indeed, no limitations upon the State's conscripting power at common law other than the State's need for, or, more accurately, benefit from the conscription. The benefit must, of course, be so great as to outweigh the detriment to the State that interference with the individual will necessarily cause. In determining the benefit that will flow from the conscription, and hence its legality, the possibility of a species of sabotage should be considered seriously. The man compelled to serve may work positive injury to the State while ostensibly he is serving it; or (and this is a more likely contingency) he may either neglect entirely or perform inefficiently the duties which have thus been thrust upon him. It may be urged that, although the State may conscript for what is historically a governmental purpose, it can not do so for purposes of a (historically) nongovernmental business in which the State may have engaged. Such a distinction, however, would be fundamentally unsound, for if the public interest warrants the carrying on of the business by the State, it may also warrant the State's conscription to support it.<sup>12</sup>

<sup>1</sup> Former Attorney General Wickersham, in his address before the Chester County Historical Society, September 28, 1912, on "The Individual and the Community." See also Mr. Wickersham's letter in *The Sun*, New York, October 6, 1912. It would appear that compulsory voting is quite generally established in civil law countries.

<sup>2</sup> *Kansas City v. Whipple*, 136 Mo., 475; 38 S. W. 295. In this unique case a provision in the charter of Kansas City which made failure to vote a penal offense, in effect, was held unconstitutional as an attempt to force the sovereign's act, since the electorate in voting act in the capacity of the sovereign. The court admitted that there was a duty to vote, but denied that performance of the duty could be compelled. Said Bruce, C. J.: "It is not service at all, but an act of sovereignty."

It is submitted that the choosing, and not the expressing of the choice (which was all the charter compelled) is the act of sovereignty; but conceding that voting is an act of sovereignty, the error in the court's reasoning is its failure to perceive that it is the sovereign who is forcing the performance of this sovereign act by the electorate. It is (to carry out the court's jettisoned conception) as though the sovereign compelled his arm to write, or his judges to make the round of assizes.

For a sharp and undeserved criticism of this case see 10 Harv. L. Rev., 439.

<sup>3</sup> See *Kansas City v. Whipple*, *supra*. It is difficult to see that jury service is less a sovereign act than voting is.

<sup>4</sup> *Israel v. State*, 8 Ind., 467. Of all these cases of conscription it should be observed that they are not isolated compulsions, but merely examples of the State's exercise of its general conscriptive power. So, here, the compulsion is said to be warranted by "the general interest and public concern."

The sixth amendment to the Constitution of the United States provides that in certain cases the defendant shall be entitled to compulsory process to secure the appearance of witnesses in his favor.

<sup>5</sup> See *Dennis v. Simon*, 51 Ohio St., 233; 36 N. E., 832; in re *Dassler*, 35 Kan., 678; 12 Pac., 130. Here also statutes authorizing the compulsion are not enlargements of the common law, but merely declarations of the State's need. See *Butler v. Perry*, 240, U. S. 328.

For the constitutionality of these road-building statutes see *infra*.

<sup>6</sup> For these four emergency services see *Freund, The Police Power*, § 614.

<sup>7</sup> See *Kansas City v. Whipple*, *supra*.

<sup>8</sup> *Freund, The Police Power*, § 613.

<sup>9</sup> For example, work upon a Mississippi levee could certainly be compelled.

At the time of the great coal strike of 1902-03 it was ably argued that the State (having taken over the coal mines) could conscript men to run them. T. A. Sherwood, "Power of the State to Operate Coal Mines and Conscript Men for that Purpose when Necessary to Avert a Public Calamity," 57 Cent. L. J., 25, 28. Mr. Sherwood rightly bases the power to conscript upon the State's "inherent power to prevent its own destruction."

<sup>10</sup> Colorado has forbidden employees in "any industry affected with a public interest" to strike "prior to or during an investigation, hearing, or arbitration" of the dispute by the State's arbitration commission. 1915 Session Laws of Colorado, 578. Cf. the strong recommendations of compulsory arbitration of railway disputes in the President's Message to Congress December 5, 1916. So, also, employees may be restrained from quitting labor at a time when injury to the State will ensue. 2 Willoughby, *Constitutional Law of the United States*, § 459. In many States statutes provide that railway employees shall not quit work on a strike, elsewhere than at a place of destination. *Freund, The Police Power*, § 333.

<sup>11</sup> "Since in all these cases the duty is general, no compensation is due." *Freund, The Police Power*, § 614. See also § 613. For cases where the rights of private property must yield to the general interest, without compensation, see 2 Kent, *Commentaries on American Law*, 12 ed. (Holmes \* 359).

<sup>12</sup> Cf. the conscription to run the railways of France, both State-owned and privately-owned, in note 5, *supra*. It is but a short time since this country was confronted with a similar situation, which was, however, met in a different way.

The limitations on civil conscription which are peculiar to the United States are likewise few.<sup>1</sup> The sixth amendment to the Constitution of the United States expressly provides for compulsory witness service in certain cases.<sup>2</sup> Conscription to serve the State's needs is neither slavery nor involuntary servitude, within the meaning of the thirteenth amendment.<sup>3</sup> And although a citizen's right to dispose of his own labor as he desires as has been construed to be included both in "liberty"<sup>4</sup> and in "property,"<sup>5</sup> as used in the fourteenth amendment, yet conscription by the State has never been regarded as a deprivation<sup>6</sup> of either liberty or property (since it is a general burden, and inures to the general welfare). A more intricate question than these is raised by the possibility of conscription by a State<sup>7</sup> for a purpose not in harmony with the interests of the United States. The most incisive example of such a State conscription is the military conscription instituted by Alabama, Mississippi, and other States<sup>8</sup> in the course of the Civil War.<sup>9</sup> Such a conscription is, of course, unconstitutional. The converse of this situation is presented when the United States conscripts to the injury of a State. In such a case, if the conscription is for the national welfare (as it would have to be to be otherwise lawful), it should be lawful notwithstanding the injury to the State.<sup>10</sup> Even in the United States, the certain limit to the individual's liberty is the State's necessity. And "necessity" may be in the future, as it has been in the past, translated into terms of policy.

Senator BRANDEGEE. Mr. Chairman, I would like to hear from Solicitor General Davis as to his views. Mr. Davis has heard the questions we have been asking Gen. Crowder, and I would be glad to hear from him, if he will favor us.

The CHAIRMAN. Mr. Davis, we shall be glad to hear from you.

#### STATEMENT OF HON. JOHN W. DAVIS, SOLICITOR GENERAL OF THE UNITED STATES.

Solicitor General DAVIS. Mr. Chairman, my views on the matter are even more fragmentary, perhaps, than those of Gen. Crowder. I heartily concur myself with everything the General has said as to the legal principles involved. The bill does not, to my mind, present any serious constitutional difficulties. I think the bill is bottomed largely on the power of eminent domain, but I do not abandon entirely the power to raise and support armies as giving additional sanction for the bill.

<sup>1</sup> Perhaps here it should be observed that the institution of a system of probation in criminal proceedings may permit, and in some cases already has permitted, trial courts to enforce conscription, both military and civil. The constitutionality of such judge-imposed compulsions has not yet been attacked, although the policy of the military conscriptions has been vehemently assailed. See frequent comment in the issues of the Army and Navy Journal, 1915 and 1916. It should be noted that although the probation may be both cruel and unusual (cf. Boston Evening Transcript, November 24, 1916, for a court order to hear Billy Sunday preach), it is not a punishment, but merely the condition of withholding punishment. Conscription though a probation order thus differs from other conscriptions in that it is made effective through an independent threat.

<sup>2</sup> See note 17, supra.

<sup>3</sup> *Butler v. Perry*, supra. In this case a Florida statute requiring labor for two days in each year upon the public roads was held constitutional. The court said (p. 333) that the thirteenth amendment "introduced no novel doctrine with respect of services always treated as exceptional, and certainly was not intended to interdict enforcement of those duties which individuals owe to the State, such as services in the Army, militia, or on the jury, etc. The great purpose in view was liberty under the protection of effective government, not the destruction of the latter by depriving it of its essential powers." See also *Robertson v. Baldwin*, 185 U. S., 275, especially the dissenting opinion of Harlan, J., at p. 298.

cf. *Dennis v. Simon*, supra, where conscription to build the public roads was held not to be such involuntary servitude as the State Bill of Rights prohibited.

<sup>4</sup> *Allgeyer v. Louisiana*, 165 U. S., 578.

<sup>5</sup> *Adair v. United States*, 208 U. S., 161, 172. See *Coppage v. Kansas*, 236 U. S., 1, 14; 2 *W. M. Loughby*, Constitutional Law of the United States, § 474.

<sup>6</sup> *Butler v. Perry*, supra, at p. 333; *Freund*, The Police Power, § 614.

<sup>7</sup> A State is certainly enough of a sovereign to conscript for a proper purpose. See *Lanahan v. Birge*, note 3, supra.

<sup>8</sup> Although no position was consistently taken by the Supreme Court of the United States, the view whose soundness force has warranted is that the States of the South, having no power to secede, were at all times members of the United States. *Texas v. White*, 7 Wall. (U. S.), 700; *Kelth v. Clark*, 97 U. S., 454.

<sup>9</sup> See 1 Davis, The Rise and Fall of the Confederate Government, c. xiv, p. 510.

<sup>10</sup> Thus, the State courts under the Confederacy held repeatedly that the conscription of the Confederacy prevailed over even a prior conscription of the same citizen by his State. *State ex rel. Graham*, in re Emerson, 39 Ala., 437; ex parte Bolling, in re Watts, 39 Ala., 609; *Simmons v. Miller*, 40 Miss. 19. In *Simmons v. Miller* (at p. 24) the Confederate constitution is construed in terms of the Constitution of the United States, which it closely followed.

I think the primary purpose of the bill probably is embodied in the power to raise and support armies and in the exercise of the power to raise and support armies the Government may avail itself of the auxiliary power—and it is always an auxiliary power—of eminent domain. In the exercise of that power of eminent domain it may commandeer property, and I myself have no question that it could also commandeer service.

Among the other illustrations which have been presented by Gen. Crowder of compulsory civil service, of course we are familiar with jury service, grand jury service, work on the roads, compulsory attendance as witnesses, service in a posse comitatus, service in compulsory fire departments, and two very recent instances of recent congressional legislation occur to me, one of which is the provision in the last post-office bill which compels the railroads, for the first time in the history of this country, to carry the mails, and the other in the income tax bill which compels the debtor to make payment of the tax at the source. That broad provision of the income tax bill was very bitterly assailed before the Supreme Court on the ground that it was compulsory service without compensation. It was defended by the Government on the ground that it was compulsory civil service, but was a burden of citizenship exactly similar in fundamental quality to the burden of citizenship involved in jury service and all these other civil services.

I think the Government can, even for its own protection, require its citizens to serve it either in war or in peace. It seems to me also perfectly clear that the Government may constitute its military forces, if it chooses, and it may man that military force either in war or peace by draft, and for the service of its military purposes it may draft men either into the regular line or into the auxiliary service that it chooses to create to serve the regular line, and may, as proposed by this bill, add to its Army *pro tempore* these civil employees of the railroads for the transportation of the Army and its supplies.

Senator TOWNSEND. Why *pro tempore*?

Solicitor General DAVIS. Simply because that is a matter of policy only and not a matter of principle. Of course it is easy enough, when any power is conferred, to argue against either the existence of the power in the first instance or the conferring and creation of power in the second instance, by putting cases of possible abuse. There is no power that I know of in the Government that can not be argued against in that fashion.

Senator CUMMINS. That is a question of the war power. Put that out of it entirely, and leave that out of the question entirely. Assume there is no military necessity for the use of the railroad. Let us assume that any given railroad carrying on interstate commerce—and let us leave the question of a strike out of it also—should decide that it will no longer continue in the operation of its road. Do you believe that we can confer power upon the President to take possession of that road and draft its former employees into the service simply to transact business?

Solicitor General DAVIS. I should not want to say so, and yet there is an analogous power in the Government, if the owner of a road refuses to continue service as a common carrier, to appoint a receiver to perform the franchises of the road.

Senator CUMMINS. I have no doubt about that power to appoint a receiver.

Solicitor General DAVIS. That is, the Government acting, not through the executive branch, of course, but through the judicial branch, to compel the performance of an obligation assumed by the carrier when it entered upon its business. Having entered upon the business affected with the public interest, it may be compelled to perform the engagements with the public that it has entered into, and compelled by the judicial branch in the form of a receivership. I am not prepared, without more consideration, to say that that power could not be compelled by the Government through the use of the executive branch. But certainly that is not approximated, I take it, in this bill.

Senator CUMMINS. I am not asserting that it is, but it has some features in it that suggest that question to me. Do you believe we could confer the power on a court to compel or draft into the service the employees in the case of a receivership?

Solicitor General DAVIS. Probably not.

Senator CUMMINS. That is the point about this legislation that bothers me. It is not so far as war powers are concerned.

Solicitor General DAVIS. I think the case which you put differs from this case in this respect: The receiver, of course, stands in the room and stead of the private owner.

Senator CUMMINS. Certainly.

Solicitor General DAVIS. In this particular instance it is no longer the private owner, but the Government itself; and if the Government as a government is conducting the operation, it may, without the violation of the thirteenth amendment, call on its citizens to assist it in that operation, although it might not be able to empower either the private owner or the receiver acting in his stead to demand a similar service.

Senator CUMMINS. I will have to be persuaded—my instinct is against it—that we could confer, in the case that I put, upon the President or any other executive officer, the authority to take possession of a road and to operate it. I do not believe that as a matter largely of inference rather than examination, because I have not examined the subject. That seems the crux of the whole thing.

Solicitor General DAVIS. I confess, as you stated it, I rather receded from the proposition myself, and if this bill were that I should say it was much more seriously debatable.

The CHAIRMAN. My instinct has run in the same direction yours does, but my reasoning runs in the direction that the purpose of giving these extraordinary powers in the case of war is because the public safety requires it. I can imagine other contingencies occurring that would present even more serious emergencies, and I do not see, as a matter of reasoning, why a law could not be put into effect in such emergency affecting public safety and public necessity.

Senator TOWNSEND. I do not know that this question ought to be asked of you, and you need not answer it if you do not wish to do so; but I am wondering if the same object, in your opinion, could not be accomplished, namely, the movement of trains, if we provided a similar law to the one we now have relative to the movement of mails, affecting interstate commerce, so that the President could use the troops to oppose obstruction to the movement of trains.

Solicitor General DAVIS. Of course, that is a question entirely of policy.

I think I know what was in the mind of the draftsman when this bill was prepared. Of course, it was written in the light of the emergency we have just been confronted with. Here was a proposition to tie up all the roads of the country and stop every wheel, practically. Here was the entire Military Establishment, both Regular and militia, located down on the Texas border. There was a possibility that that establishment might find itself down there cut off entirely from the rest of the country, both as to the possibility of returning the men there, if occasion demanded it, and as to the possibility of reprovisioning them. It would not be enough, in as acute a situation as that threatened to become, to simply have the penal law which would penalize the railroads for refusing to carry, or would penalize the men for refusing to run the trains in a crisis of that sort. If it went to extremes—and, of course, we are dealing with an extreme situation—there must be some machinery by which both the physical property and the human agencies could be secured to unloose that deadlock.

The bill says "in case of actual or threatened war, insurrection, or invasion." Of course, these troops were on the border and might be fairly said to be there in time of actual or threatened war or insurrection; but assuming that in the interim the situation in Mexico had entirely ironed out and the relations had become of the most cordial and the Government in Mexico had become the most stable and there was no longer any necessity whatever for keeping these militiamen on the border. Certainly the Government should not be compelled, by the mere suspension of the operations of railroads, to keep those men there indefinitely, when there is nothing in necessity for it, and it ought to have just as much power to bring them back home when the emergency is over as it would have to take them there when the emergency arises. It was in the light of that thought that the clause was added here, "or other emergency requiring the transportation of troops, military equipment, and supplies of the United States." In bringing these men from the border back home after that situation had all subsided, they were not being brought back home to a war or threatened insurrection or invasion. It was just simply the reverse of that proposition. You can easily enough imagine a situation where there is no imminent military danger, and yet where the movement of troops of that sort would be imperative. Suppose we had had a military maneuver on and had all the troops collected for the maneuver, and the maneuver was ended. Suppose a strike of this sort came. It would be necessary to disperse those troops to their homes or their military posts. I think this general clause here would authorize the President to take such trains and men as were necessary to disperse that encampment and to send those men back home.

Senator BRANDEGEE. Would it authorize him to continue the operation of all the cars in commerce, aside from those required for the military use?

Solicitor General DAVIS. I am frank to say I do not think the bill fairly bears that construction. I think, with the bill properly administered, the President would take so much and only so much of the railroad trains or the men on them as were needed for the legitimate

movement he was trying to conduct, and I agree with Senator Cummins that if he took more than was legitimately required for the movement he sought to conduct, it would be a subterfuge, and I am inclined to think the courts would penetrate it as such.

The CHAIRMAN. We are very much obliged to you both, Mr. Davis and Gen. Crowder.

(Thereupon the committee adjourned until to-morrow, Friday, January 19, 1917, at 10 o'clock a. m.)

POST OFFICE DEPARTMENT,  
OFFICE OF THE SOLICITOR,  
Washington, January 16, 1917.

HON. FRANCIS G. NEWLANDS,

*Chairman Committee on Interstate Commerce, United States Senate.*

MY DEAR SENATOR NEWLANDS: Complying with your request of to-day that I prepare for presentation to your committee at its session to-morrow morning a statement of the legal constructions that have been placed upon sections 3995 and 3996 of the Revised Statutes of the United States, I have to submit the following:

Sections 3995 and 3996 of the Revised Statutes were originally enacted on June 8, 1872, and on March 4, 1909 (35 Stat. 1088), they were embodied as sections 201 and 202 of the Penal Code with slight modifications, so that the law now reads:

"SEC. 201. Whoever shall knowingly and willfully obstruct or retard the passage of the mail, or any carriage, horse, driver, or carrier, or car, steamboat, or other conveyance or vessel carrying the same, shall be fined not more than \$100, or imprisoned not more than six months, or both.

"SEC. 202. Whoever, being a ferryman, shall delay the passage of the mail by willful neglect or refusal to transport the same across any ferry, shall be fined not more than \$100."

So far as I am aware there have been no judicial constructions of section 202, but the courts have many times passed upon section 201, as will be seen from the following, which is taken from The Federal Penal Code of 1910, annotated by George F. Tucker and Charles W. Blood.

"This section is founded on United States Revised Statutes, Section 3995. The words 'or car, steamboat, or other conveyance or vessel,' and 'or imprisoned not more than six months, or both,' are inserted. (*Clune v. United States*, 159 U. S. 590, 594, 40 L. ed. 269). This provision has been held to apply only to the mail while in transitu, and not to the stopping of a horse when being taken from a stable for use in carrying the mail (*United States v. McCracken*, 3 Hughes, 544, 26 Fed. Cas. 1069, contra); in the case of an innholder, who, to enforce his lien for livery, stopped stage horses in the public highway, while drawing a stage coach containing the mail. (*United States v. Barney*, 3 Hughes, 545, 24 Fed. Cas. 1014; 3 Hall's L. J. 128.) It applies to the stopping of a railway mail train by one who has a judgment and writ of possession from a State court against the railroad company in respect to the lands about to be crossed by such train (*United States v. De Mott*, 3 F. R. 478); to the stopping of such a train, although those guilty are willing to permit the mail car only to pass (*United States v. Clark*, 13 Phila. 476, 25 Fed. Cas. 443; *In re grand jury*, 62 F. R. 834, 840; 21 A. G. Op 9); or to the stopping of a train by discharged railway laborers, although their primary intention may be, not to obstruct the mail, but to obtain a return passage (*United States v. Kane*, 19 F. R. 42; *United States v. Clark*, supra); and to any case where those who perform the act complained of know that it will have the effect to retard the passage of the mail, and perform it with that intent. (*United States v. Kirby*, 7 Wall. 482, 19 L. ed. 278; *United States v. Claypool*, 14 F. R. 127.) It does not apply to a temporary detention of the mail caused by the carrier's arrest upon a charge of felony. (*United States v. Kirby*, supra.) And, in certain cases in other courts, it has even been held not to apply where the person carrying the mail is taken in custody by a qualified officer holding a warrant for his arrest for an offense which is not a felony, such as fast driving, in violation of a municipal ordinance. (*United States v. Hart*, Pet. C. C. 390, 3 Wheeler C. C. 304; 5 A. G. Op. 554; *Penny v. Walker*, 64 Maine 430. See *United States v. Harvey*, 1 Brunner, 540, 26 Fed. Cas. 206.)

"The United States Government has power in every portion of the country, under its control of interstate commerce and of the mails, to remove any obstruction to such commerce or to the postal service. (*In re Debs*, 158 U. S. 564, 39 L. ed. 1092.) This applies to obstructions to the most modern forms of conveyance upon railroads and electric railways, and includes employees who suddenly desert their work. (*Id.*; *United States v. Thomas*, 55 F. R. 380; *United States v. Sears*, Id. 268; *United States v.*

Woodward, 44 Id. 592; *Thomas v. Cincinnati, etc., Ry. Co.*, 62 Id. 803; In re grand jury, Id. 834, 840; *United States v. Cassidy*, 67 Id. 698; *So. Cal. R. Co. v. Rutherford*, 62 Id. 796.) Equity will not specifically enforce a contract for personal services. (*Farmers' Loan & Trust Co. v. No. Pac. R. Co.*, 60 F. R. 803, 5 Chic. L. J. N. S. 461.) The refusal of the owners of a private toll road to permit the passage of a mail wagon over the road without paying toll is not a violation of this section. (*Harper v. Endert*, 103 F. R. 911; contra, *United States v. Sears*, 55 Id. 268.) An indictment under this section must allege that the accused knew the train to be carrying mail. (*Salla v. United States*, 104 F. R. 544; and see *Conrad v. United States*, 127 Id. 798.) Where the act causing the obstruction is itself unlawful, an intent to obstruct will be imputed. (*United States v. Lawhead*, 10 Chic. Leg. News, 60, 2 Cin. Law Bul. 263, 268, 26 Fed. Cas. 877.) The fact that one committed murder in violating this section does not prevent his being tried for murder in a State court. (*Crossley v. California*, 168 U. S. 640, 42 L. ed. 610.)

"A conspiracy to commit an offense described in this section may be an offense under section 37. (*United States v. Stevens*, 2 Haskell, 164, 171, 27 Fed. Cas. 1312; 21 A. G. Pp. 9.)"

I do not find that there have been any judicial constructions since the publication of the work just referred to.

In response to requests for an expression of the views of this office regarding the construction of these statutes, this office has rendered opinions as follows:

"All persons in the public service are exempt as a matter of public policy from arrest upon civil process while thus engaged, but a mail carrier can be arrested while on duty if charged with a felony.

"Tollgate and ferry keepers have no right to detain the mail to obtain their fees." (1 Op. A. A. G., P. O. D., 732.)

"A mail carrier can be arrested for a felony even though the mail is thereby delayed, but not for a misdemeanor." (1 Op. A. A. G., P. O. D., 883.)

"An attachment of a 'mail team' in actual transit would constitute an indictable obstruction of the mails, but the attachment of a team used in carrying the mail when no mail was in it and when it was not on the road enroute would probably not be deemed an obstruction within the meaning of R. S., sec. 3995." (2 Op. A. A. G., P. O. D., 440.)

"It is doubtful whether the arrest by a city marshal of a carrier of the mails for driving through a funeral procession in violation of a city ordinance in order to make connection with an outgoing or incoming mail would be held lawful." (2 Op. A. A. G., P. O. D., 668.)

"The passing of from 20,000 to 30,000 Sunday school children in a procession through the streets of the city required unusual care and attention on the part of the police authorities to prevent accidents, and I am of the opinion there was no violation of this section by policeman No. 76 temporarily detaining mail wagon No. 5 and not allowing it to be driven through this procession of Sunday school children." (3 Op. A. A. G., P. O. D. 107.)

The arrest of a person having custody of the mails so as to delay the same is, an obstruction of the mails within the meaning of section 3995, R. S., if the arrest is made on civil process, but not if it is based on criminal process, even though the offense resulting in the arrest may be merely a misdemeanor.

"A marshal who arrests the locomotive engineer of a mail train for violation of a city ordinance prohibiting the running of trains through the city at a greater speed than 5 miles an hour is not guilty of a violation of the statute cited, even though he knows that such train is carrying United States mail, and that such mail will be delayed by making the arrest. (3 Op. A. A. G., P. O. D. 119.)

"The statutes of the United States making public roads and highways post-roads do not exempt the United States or its officers or agents from the payment of toll for the use of such roads as are owned and operated as toll roads by States or private parties, and rural letter carriers, like contractors for carrying the mails and their carriers, are liable for tolls the same as other persons.

"However, under sections 3995 and 3996, Revised Statutes, which make it an offense for any person to 'knowingly or wilfully obstruct or retard the passage of the mails or any carriage, horse, driver, or carrier carrying the same,' payment of tolls

by carriers may not be enforced by delaying their passage; but these statutes should not be used for the purpose of defeating the collection of proper tolls. (3 Op. A. A. G.; P. O. D., 732.)

\* \* \* \* \*

"A State game warden has no authority to retard the passage of the mails for the purpose of searching for evidence of violation of State game laws by a mail carrier. (4 Op. A. A. G., P. O. D., 14.)

\* \* \* \* \*

"In the light of this decision, *United States v. Kirby, supra*, it is my opinion that a temporary and reasonable delay in the transportation of the mails, occasioned by an agent of the Indian Office in searching the conveyance of a mail carrier suspected of carrying liquor into the Indian country, under the authority of Section 2140 of the Revised Statutes, would not be within the prohibition of Section 201 of the Criminal Code. Mail matter itself, of course, is not subject to search or seizure in these circumstances." (Op. Solicitor, P. O. D., of April 9, 1915; unpublished.)

Very truly yours,

W. H. LAMAR, *Solicitor*.

(Order of Railway Conductors, Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Engineers, and Brotherhood of Locomotive Firemen and Enginemen.)

Personal.]

NATIONAL LEGISLATIVE AND INFORMATION BUREAU,  
Washington, D. C., February 12, 1917.

HON. FRANCIS G. NEWLANDS,  
*United States Senate, City.*

DEAR SIR: With the beginning of the development of railroad transportation in America the employees in engine, train, and yard service found it necessary to organize in order to protect their interests as to their conditions of employment, rates of pay, and hours of labor. Therefore they conceived the idea that by collective bargaining their mutual interests were best served and protected and substantial justice could be obtained as between employer and employee in this manner. The results were that the Brotherhood of Locomotive Engineers, the Order of Railway Conductors, the Brotherhood of Locomotive Firemen and Enginemen, and the Brotherhood of Railroad Trainmen came into existence. Following their organization for a number of years their efforts were on the individual properties. However, it developed that the employers were organizing in groups or associations taking in a number of lines of railway in given territory, and accordingly the employees to meet this new situation had to organize associations covering the same territory. These means of negotiation were carried on for some time and with a marked degree of success, but the employers extended their organization to a larger degree, taking in practically the whole North American continent, and the employees in order to meet this new situation and to make effective their requests for a shorter workday, made requests on roads in the new territory started by the employers.

Resulting from this arrangement requests were made simultaneously on all of the lines in the United States for a basic eight-hour day and time and a half time for overtime, which resulted in the final analysis in our inability to reach an adjustment because of the position of the employers in declining to meet the requests of the employees. The methods of accommodation provided by law in the United States were exhausted and the President of the United States requested the parties to the controversy to meet him, at which time he made certain suggestions as a basis for the settlement of the pending controversy, recognizing certain parts of the requests of the employees and declining others, which was accepted by the employees but declined by the employers, and resulted in the President going before Congress and presenting these facts, Congress then taking action by the passage of the so-called Adamson Act, and with the understanding on the part of the employees that if this granted the basic eight-hour day it would be acceptable to the employees as a settlement of this question, and acting upon these assurances it was accepted by the employees. Under the provisions of this act the basic eight-hour day was to become effective January 1, 1917. However, the employers saw fit to stop the application of the basic eight-hour day by resorting to suits, injunctions, and numerous litigations, resulting in this matter being held up in the courts past January 1, 1917. This matter is still in the courts and no decision will now be rendered until after the adjournment of the present session of Congress, the employees in the meantime being deprived of the benefits derived from the act of Congress and of the benefits guaranteed them if they would accept this settlement.



In the meantime the President of the United States suggested that in future controversies between the railroads and their employees, when the methods of accommodation provided by law had failed that there should be an investigation in order that the public might be fully apprised of the merits of such controversy. But due to the attacks being made by the railroads on the acts of Congress which had not been settled by the courts, involving the rights of Congress to treat with this subject, many and numerous proposals were made dealing with this question, some in the form of compulsory investigation, some in the form of empowering the Interstate Commerce Commission with the authority to fix rates of pay and hours of service of the employees and others by the introduction of bills in Congress, not waiting for the action of the courts on this subject.

Hearings were held on some features of these proposals and strenuous opposition was made to the passage of any form of legislation at this time or at least until the pending questions were disposed of by the courts and the employers. After these hearings before the committees of Congress reports by these committees, in the form of two proposed bills, were submitted to Congress, in which new matter was injected which the employees had not been given the right to be heard on. The employees protested against the passage of the proposed legislation already introduced, stating it wholly unnecessary at this time for Congress to act, but in the event that some action was imperative they suggested a method of investigation which they believed to be fair. This, however, was declined by the committee.

The House Committee on Interstate and Foreign Commerce reported out a bill which was introduced by the chairman of the committee, Mr. Adamson, and known as H. R. 20752, containing new matter which had not been considered in open hearings by the committee and the employees given opportunity to be heard on same and which contains provisions that strike at the very liberties of the employees in interstate commerce and goes further than any known legislation in the history of the civilized world toward the enslavement of these people.

The Senate Committee on Interstate Commerce reported out of the committee, and had introduced in the Senate by its chairman, Senator Newlands, a bill (S. 8201) which in substance is the same measure as reported out by the House committee, although eliminating some objectionable features of the House bill and making certain exemptions not contained in the House bill. It, however, does contain new matter on which hearings have not been held and which to say the least is very objectionable and dangerous to the liberties of the employees in interstate commerce.

The President of the United States suggested that in case of actual or threatened war that he be given certain authority regarding the handling of or transportation of troops and military supplies. Taking this as a criterion, an attempt has been made to make drastic provisions for the confiscation of property and the conscription of employees in time of actual or threatened war and added provisions extending to times of peace "and other emergencies," making the most drastic and far-reaching attempt toward the destruction of the rights of the employees of the railroads.

The past history of these railroad organizations has demonstrated their patriotism, conservatism, and reputation for honesty and fair dealing. The very fact that in the past years we have been able to adjust our differences without serious inconvenience to the public, and based on this reputation we do not now believe that we should be deprived in the future of the same rights accorded other American citizens.

We, therefore, as the representatives of more than 400,000 citizens of the United States, in the name of liberty and justice ask your most serious consideration of the two pending measures in Congress, which we believe strike at the very liberties of these citizens and of their more than 1,000,000 dependents, and earnestly request that you use your best efforts to defeat this drastic and unnecessary legislation, remembering that any legislation that destroys the liberties of American citizens merits most serious consideration, and that men engaged in interstate commerce should be accorded fair, reasonable treatment and not be discriminated against because their employers refuse to bow to the will of the Congress of our country.

Thanking you for any consideration given this request, and assuring you that anything you may do to defeat this drastic legislation will be appreciated by the million and a half people we represent directly and indirectly,

Very truly, yours,

H. E. WILLS,

*A. G. C. E., and National Legislative Representative, B. of L. E.*

P. J. McNAMARA,

*Vice President, National Legislative Representative, B. of L. F. and E.*

W. M. CLARK,

*Vice President, National Legislative Representative, O. R. C.*

W. N. DOAK,

*Vice President, National Legislative Representative, B. of R. T.*

MASSACHUSETTS STATE BOARD OF TRADE,  
*Boston, Mass., January 27, 1917.*

DEAR SENATOR: Inclosed please find resolutions passed unanimously at the mass meeting of business men held in Springfield, Mass., at the auditorium, on the afternoon and evening of December 28.

His Excellency, Gov. Samuel W. McCall presided; President Henry G. Wells, of the Massachusetts Senate; Dr. Victor S. Clark, of the Carnegie Institute of Washington, Washington, D. C.; and John F. Tobin, of the American Federation of Labor, were some of the prominent speakers.

Appreciating your interest in the problem of transportation, and knowing that you will give full value to the expression of the business men of Massachusetts, I am,

Sincerely, yours,

MASSACHUSETTS STATE BOARD OF TRADE,  
 GEORGE A. FIEL, *Secretary.*

PREAMBLE AND RESOLUTIONS FAVOR FEDERAL REGULATION OF RAILWAY RATES,  
 INTERSTATE AND INTRASTATE FEDERAL CONTROL OF RAILWAY SECURITIES  
 ISSUES.

Proposed railway strikes or lockouts should be subject to investigation by the Interstate Commerce Commission.

The New Haven should retain control of its boat lines.

Favor increase of Interstate Commerce Commission membership to nine.

The Massachusetts State Board of Trade, comprising 53 commercial bodies representing a membership of 15,000 substantial business men in convention assembled at Springfield, December 28, 1916, preamble the Congress and the President of the United States as follows:

Within the past few years the banking laws of the country have been thoroughly remodeled and a central agency established whereby the merchandizing of credit has been put upon a sound economic basis and the incongruities of the past done away with.

Not so with the railways. They are subject to 49 masters—the Federal Government and 48 individual State governments. Despite the fact that the railway business has grown essentially national in scope, railway regulations has remained local in character. It is true that the Government, through the Interstate Commerce Commission, controls the railways in so far as interstate traffic is concerned, and that State regulative commissions assume control merely of interstate business. But the distinction between the two—interstate and intrastate—has become more artificial than real, and serious conflicts have become more and more frequent.

Probably the most serious charge to be made against the dual system of regulation as employed in the United States is its inefficiency. It is unnecessarily costly, both to the Government and the railways, and consequently to the people. Conflicting regulations and laws are passed by the various States through which the railways run, and it is often difficult, and sometimes impossible, for a railway to obey the law of one State without conflicting with the regulations of another. A prodigious waste of energy has resulted, and a corresponding loss of power to serve the public.

The railways and the public suffer from present conditions. Railway development has come to a standstill practically. The future of the country, and particularly during the next few years, demands a more enlightened policy. In the interest of New England, as well as in the interest of the whole country, we offer the following:

*Resolved by the Massachusetts State Board of Trade in convention assembled in the city of Springfield, December 28, 1916;* That the act to regulate commerce shall be so amended as to confer upon the Interstate Commission final authority over all rates and regulations which affect interstate commerce, whether such rates apply to interstate or intrastate shipments; and that in the event of conflict of jurisdiction between the Interstate Commerce Commission and the railway commissions of the several States, that the jurisdiction of the Interstate Commerce Commission shall be final and conclusive.

*Resolved,* That in order to attract the necessary capital and to provide for the development of transportation facilities to meet the rapidly growing commercial needs of the country, and to develop its resources, Congress should enact such legislation as will restore the confidence of the investing public and guarantee the transportation service required to meet the needs of the public, and that this confidence can only be secured by giving to the Interstate Commerce Commission final and conclusive authority in the matter of issuance of all railway securities.

*Resolved*, That we favor an increase in the membership of the Interstate Commerce Commission from seven to nine members, as provided for in the bill which has passed the House of Representatives and is now before the United States Senate for final passage. The Interstate Commerce Commission, in a report just submitted to Congress, says:

"The New York, New Haven & Hartford Railroad system is made up of various formerly independent lines of rail and water carriers. By purchases and consolidations the New Haven Co. has become the owner of various water lines, operated mainly between New England points and New York Harbor, which compete directly with its rail lines between the same points. There is no question as to the competition, but the record is replete with evidence from shippers and representatives of communities in New England to the effect that the service is in the interest of the public, is of advantage to the convenience and commerce of the people, and if the present ownership and operation is discontinued there will be no reasonably adequate service to take its place, and the communities will be deprived of the benefits of the water transportation and the competing routes, thus inflicting irreparable injury and benefiting no one.

"We think that these facts should be brought to the attention of the Congress, so that in the light of those facts it may determine whether or not authority shall be conferred upon the commission to permit, in such cases and under such circumstances, a continuance of the railroad ownership, control, or operation of the water lines, subject to such further and different orders as the commission may subsequently enter upon a further hearing and a showing of substantially changed circumstances and conditions."

There is no need to add to the statement of the Interstate Commerce Commission, which discloses that the sentiment of the New England public is in favor of "giving to the Interstate Commerce Commission the power to continue the present situation of railroad control both of the Sound lines and the Lake lines as well." Therefore, be it

*Resolved*, That the Massachusetts State Board of Trade urge the Congress to pass the following amendment to the fourth paragraph of section 5 (as amended Aug. 24, 1912) of the act to regulate commerce, as follows:

"If the Interstate Commerce Commission shall be of the opinion that any such existing specified service by water other than through the Panama Canal is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, or that such extension will neither exclude, prevent, nor reduce competition in the route by water under consideration, the Interstate Commerce Commission may, by order, extend the time during which such service by water may continue to be operated beyond July first, nineteen hundred and fourteen."

*Resolved*, That a copy of this preamble and these resolutions be forwarded to each Member of the House of Representatives and the United States Senate and to the President of the United States.

JOHN H. CORCORAN,  
*Chairman.*

Other members of committee on resolutions follow:

William Henry Gleason, Winchester, Mass., representing Associated Industries.

Joseph Wing, Brookline, Mass., representing National Wool Manufacturers' Association.

George F. Willett, Norwood, Mass., representing Norwood Board of Trade.

Hon. Frank E. Stacy, Springfield, Mass., representing Springfield Board of Trade.

F. Alexander Chandler, Boston, Mass., representing New England Hardware Dealers' Association.

George L. Avery, Framingham, Mass., representing Framingham Board of Trade.

George C. Morton, Boston, Mass., representing Paint and Oil Club of New England.

WASHINGTON, D. C., February 12, 1917.

HON. FRANCIS G. NEWLANDS,  
*United States Senate,*  
*Washington, D. C.*

DEAR SIR: Mr. Gowen, the general counsel of the Pennsylvania Railroad, and I hoped to have the opportunity of seeing you on Saturday to bring to your attention certain amendments to S. 8201, but your engagements prevented.

In section 2, line 12, we think there should be inserted after the word "retard," the words "to attempt to obstruct or retard," and in section 2, line 24, the words "for any of the purposes by this section prohibited" should be stricken out.

The reasons for suggesting these amendments as they occur to us are as follows:

The amendment indicated on line 12, page 4, seems to be desirable because, as the section now reads no offense would be committed by efforts to obstruct or retard the passage of mails or interstate transportation unless those attempts were successful. It is most important, having regard to the object of the section, that the attempt to obstruct or retard should be punishable even though not successful. Moreover, if the attempt itself to thus obstruct or retard were not punishable, it would be necessary apparently to establish, in order to convict anyone, that the carriage of the mails or interstate transportation was actually obstructed or retarded by some act of his, and in cases where the intimidation was participated in by a large body of men, it might prove very difficult to establish that the act of any one man was responsible for the obstruction which ensued.

It is important that the words stricken out on lines 24 and 25 should be omitted, otherwise it would be necessary, in order to convict under the section, to establish not merely the trespass which the section prohibits, but also that the person trespassed in order to obstruct or retard the carriage of the mails or interstate transportation. This would make necessary proof of intent, always a difficult matter to establish.

In case of a strike it is most important that the striking employees should be prohibited from coming upon or trespassing upon the premises of the employer without some justification for so doing, and of course where there was justification the provisions of the section would not be violated, because in that case the act of going upon the premises would not be an act of trespass, and consequently the section would not apply. Where there is no justification, however, then in order to accomplish what the section is designed to accomplish there should be a prohibition of trespassing, regardless of the purpose for which it is committed.

We trust that these amendments will commend themselves to your consideration, and that you will see your way clear to have them inserted in the bill, for we believe the bill will be very much strengthened by their insertion.

Very truly, yours,

S. C. NEALE,  
*Attorney, Pennsylvania Railroad Co.*

#### STATEMENT OF MR. AMOS L. HATHEWAY.

The CHAIRMAN. Please give your full name, residence, and occupation.

Mr. HATHEWAY. Amos L. Hatheway, Boston, Mass., attorney at law. I am representing the Boston Chamber of Commerce in my capacity as a member of its transportation committee.

The Boston Chamber of Commerce, gentlemen, is a body of some four thousand-odd citizens intimately associated with the financial and commercial interests of New England. They are part of the great public, and the great public, it seems to me, is a party very much in interest here. I am not going to burden the committee with statistics. I shall assume that this committee has been informed and fully realizes that New England is particularly liable to acute suffering in case of developments similar to that which came to such a head last August. She is dependent for 75 per cent of her sustenance upon merchandise which is brought in from the outside and must pay for that by an equal amount of her own manufactured products which she sends out. I am assuming that these facts are familiar to the committee as well as the broader facts that the public at large is an acute and immediate sufferer whenever such a condition is allowed to develop as developed in the closing days of August, 1916.

I shall, therefore, gentlemen, get down to what seems to me the basic propositions involved in the situation, and they are first, to my mind, the parties involved, and I submit, so far as the parties are concerned, they are first, capital, as represented in railroad transportation, secondly, the workers, who conduct the operation of the railroad lines, and thirdly, the great public, as a party with a paramount

interest, who can not be ignored or excluded or forgotten or omitted in any sense in any contract relation which may be entered into between railroad capital on the one side and railroad labor on the other, and in connection with that statement of position, I wish to submit the following brief proposition:

First. The railroad systems of the country have been equipped and developed largely by the contributions of the American people supplemented by Government aid, both State and Federal.

Second. The railroad corporations are the creatures of the State, and their functions are performed by virtue of public authority. They are quasi-public corporations and as such their owners have had to give up many of the rights which accrue to ownership in other forms of property.

Third. The interests of the railroads, the Government, and the public have become intimately interwoven and related, and reciprocal rights and obligations have been developed which can not be divorced. In case of interruption of the service the public are the immediate and acute sufferers, and as a party with a paramount interest they are entitled to be safeguarded in their rights and assured that the service shall be continuous and unimpeded.

Fourth. The right of the body politic to protect itself and assure the public safety is the highest conceivable right and the broad scope of the national commerce power subjects to national regulation all the agencies by which national commerce is carried on.

Fifth. National legislation has limited the power and freedom of capital when it has become a menace to the public interest. It can also restrict the operations of the workers when by combination—that is the crux, gentlemen, to my mind—it can also restrict the operations of the workers when, by combination, they become a threat to the public good. To this end the legislation proposed by the President seems to us timely and necessary.

When a situation can develop such as came to a head last August, when 400,000 workers and about 600,000 stockholders threatened a tie-up of the transportation interests of the entire country because they could not agree upon the principle of the eight-hour law, it raised the question as to whether or not 110,000,000 people of the United States have any rights which railroad capital and railroad labor are bound to respect, and I assume that we all take for granted that that situation must if possible never be allowed to develop again, and that brings us to the question as to what power Congress has to legislate along lines which shall tend—if only tend at present—but which shall tend to prevent the possibility of the recurrence of that situation, and I submit to you gentlemen that by virtue of the control of interstate commerce which Congress has assumed, it has acquired a right analogous to the police powers of the States, and that that right has been reinforced by the association of the public—the intimate association of the public—by virtue of its ownership, by virtue of the surrender of its rights in a measure, by virtue of charters which it has granted to railroad capital to exercise its function—by virtue of all these things, its duly constituted legislative power has the right to see to it that the public safety is cared for; that the underlying and enveloping right of the public is in a Government such as ours superior to any other individual right; that no small body of men should ever be allowed to endanger

the public safety and that the powers of Congress are broad enough to enable it to pass the legislation which has been recommended by the President.

It may be that this is not the final form, but as a means to an end, as an open door, I am asked to urge with all the vehemence I can, with all the unction I can, that this piece of legislation shall be put upon the statute books at this time.

Gentlemen, I am obliged to you.

Senator UNDERWOOD. Let me ask you a question or two at this point. The purpose of this legislation that you recommend is with the intention of withholding a strike, or the bad results of a strike, until a board of arbitration can make a report. It is a half-way house. Is there any necessity, looking at it from the standpoint of your argument, of stopping at a half-way house? If the Government is going to take this over, in the interest of the public, and control this question in the interest of the public, why should not the Government, as a primary proposition, fix the hours of labor on railroads?

Mr. HATHEWAY. I do not see, Senator, why the Government has not that right.

Senator UNDERWOOD. Why should we stop, if we act at all, at this half-way house?

Mr. HATHEWAY. It may be that the answer to that is perfectly obvious, but the legislation suggested is the legislation I am speaking about. I am not prepared to say I would not go so far as to say the Government should not take over the regulation of wages and hours of labor, but at the present time, I have a feeling that legislation, after all, is a matter of compromise—

Senator UNDERWOOD. You are correct in saying that legislation is a matter of compromise, but that is a question for us to determine—how far we can go. You are giving us the views of yourself and the men you are representing.

Mr. HATHEWAY. That is what I am attempting to do.

Senator UNDERWOOD. From your statement, if you could put the legislation on the statute books, would you stop at the half-way house or make a final settlement of it?

Mr. HATHEWAY. I should be controlled entirely by the question of expediency. Logically I should think it might be the thing to do.

Senator UNDERWOOD. To make a final settlement?

Mr. HATHEWAY. That seems to me to be the logical conclusion, but as I say, I should be governed almost entirely in this respect by the question of expediency.

Senator UNDERWOOD. I do not know that there was an eight-hour proposition involved in the Adamson bill, but I do think that the logical question that the workers on the railroads had involved was the question of shorter hours of work, although I do not believe it actually got into the legislation. Now, if we are to attempt to regulate the hours of labor, don't you recognize that there are different conditions on different railroads, which must be met, and that it is impossible for Congress itself to meet those conditions by a statute that has got to be as broad and as wide as the territorial jurisdiction of the country? In other words, you might run a train 12½ miles

an hour on the Louisville & Nashville Railroad, in the south, where the stations are far apart and there are few side-tracks, but if you attempt to run a freight train continuously, on an average of 12½ miles an hour between New York and Boston, you would have great difficulty in passing sidings, and getting in on time.

Mr. HATHEWAY. That brings us back, Senator, to the question of expediency.

Senator UNDERWOOD. That is the question I wanted to bring to your attention. Of course, if we pass a law, we can not pass one law for Alabama and one for Massachusetts. Our law has got to be as broad and as wide as the country; but if we delegate this power to the Interstate Commerce Commission, or some other commission, then they have got discretion to meet these conditions as they exist. In other words, if we delegate the power to fix the hours of labor to the Interstate Commerce Commission, they could meet conditions in various parts of the country through that delegation of power which Congress can not do. Don't you think that would be wiser than for Congress to undertake to act without knowledge of the particular facts?

Mr. HATHEWAY. I think it would be wiser than for Congress to attempt to go along the lines which you have pointed out—that it would be wiser to accept your suggestion—but I do not think we ought to let the opportunity pass to let public opinion form itself upon definite information, which can be provided by this proposed legislation. The Canadian act has worked to the almost entire satisfaction of all parts of the public there. There have been amendments proposed to it, of course; but it has worked with amazing efficiency. After that act became a part of the statute law and became understood by the public, it was so generally recognized as a solvent and the public became so convinced of its workability that during the two years following 1907 there were but two strikes—actual strikes—pulled off; and only one was a railroad strike, and that one railroad strike was one of 20 strikes threatened.

Senator UNDERWOOD. Of course, in Canada they have no limitations of the Federal Constitution on them, as we have, but, aside from that, the purpose of this arbitration law is merely the finding of a verdict. After it is found there is nothing further to it, without the men, the railroads, and the public accept it. Now, if we gave the power to fix the rates of wages and hours of labor to the Interstate Commerce Commission, without compulsion—to fix it just exactly as they fix the rates of freight—do you think any railroad in this country would become involved in a strike until it had filed a petition before the Interstate Commerce Commission—do you not think that public sentiment would be so strong that they could not afford to be involved in a strike until they had presented their petition to the commission and been heard?

Mr. HATHEWAY. I think that would depend entirely on how obligatory it would be upon labor. If it would not be compulsory—

Senator UNDERWOOD. I mean, if we said instead of the railroad presidents and managers fixing the rates of wages and hours of labor, we say to the men, "If you are not satisfied with your rates of wage and hours of labor, you can come to the Interstate Commerce Commission and present your case and argue it, and they will decide the question as to what your rates of wage and hours of labor will be,"

do you think any of these operatives could involve the country in a strike before they presented their case to the Interstate Commerce Commission?

Mr. HATHEWAY. I should be inclined to say no to that. I hope not.

Senator UNDERWOOD. If that is the case, then the first step is covered by the proposition—this compulsory feature would be covered by simply referring the case to the Interstate Commerce Commission. The public would get the same verdict and the same understanding from the commission as they would get from the arbitration, and there would be no compulsion in it.

Mr. HATHEWAY. I do not understand this is arbitration—I do not understand that compulsory arbitration is involved in this matter.

Senator UNDERWOOD. It is contended by some it is, and by some it is not.

The CHAIRMAN. Senator, how can you justify the application of the term "compulsory arbitration" to a Government investigation—

Senator UNDERWOOD. I am not depending on that question—

The CHAIRMAN (continuing). By officials of the Government appointed for that purpose?

Senator UNDERWOOD. What I mean is this: There can be no occasion for any controversy with respect to compulsory arbitration at all if the Interstate Commerce Commission had power to fix wages. If they did have the power, and they fixed the rate of wages, do you think it is at all probable that that would not, after this matter has been settled by an independent court, be a final solution to the problem?

Mr. HATHEWAY. In view of the attitude of the combination which came here last summer, I am not prepared to say that, in the absence of an obstacle, they would wait for a tribunal of that sort. I simply do not know.

Senator UNDERWOOD. Don't you think that if there was a tribunal of that kind, which would give a fair hearing, an independent hearing, free of bias on either side, and render its verdict, that public opinion itself would be strong enough to prevent either the railroads or the men going against that verdict?

Mr. HATHEWAY. I should strongly hope so, or else I would give up my hope for the success of democratic government.

Senator UNDERWOOD. Why is there any necessity, then, for stopping at this halfway house?

Mr. HATHEWAY. I do not think we need go into the rights of individuals here—

Senator UNDERWOOD. Is not that the final conclusion?

Mr. HATHEWAY. It may be so. The question now is as to expediency?

Senator UNDERWOOD. Well, you represent a great business body.

Mr. HATHEWAY. Yes, sir.

Senator UNDERWOOD. I agree with what you said very thoroughly, that although there is a great issue involved with the men who work on the railroads, and a great issue for the capital invested, the people who are primarily involved in this question is the American public; that their business and commercial life, their very existence, is dependent on keeping open these arteries of trade; that primarily it must be their rights we must consider ahead of either of the contending parties. If that is true, why should not the public be repre-



sented in the decision of the controversy? Why leave it to the question as to whether you can find a verdict, or secure a finding of a board that will be agreeable to the railroad owners on the one side and the men on the other side, irrespective of what the public opinion may be?

Mr. HATHEWAY. I think the theory of this proposed legislation is that public opinion is the court of last resort, and if it can once be formed, it will stand.

Senator UNDERWOOD. But let us suppose a case. The public has no way of acting in this bill at all—the men you represent?

Mr. HATHEWAY. No, sir; they are not represented.

Senator UNDERWOOD. Now, this board or court finds a verdict. It is an agreeable verdict to the railroads and it is an agreeable verdict to the men and they accept it. But it may be a verdict that the public is very much opposed to because it may put an enormous burden upon the citizens. Where, if you try to settle the question, would you let it be settled—by the decision of a tribunal of this kind which ignores the public entirely?

Mr. HATHEWAY. Might not that be equally true of any finding by the Interstate Commerce Commission?

Senator UNDERWOOD. Now, is that so? The Interstate Commerce Commission is not made up to find—this is not a verdict; it is merely a report. The result is accepted by the two contending parties, leaving the public out. The Interstate Commerce Commission is appointed by the President. They are representatives of the Government, and they are supposed—and I think they do—represent all of the people of the United States, commerce as well as the transportation companies and their employees. Well, now, under those terms, is not any verdict that would be found by the Interstate Commerce Commission a verdict that would protect and reflect the views of the public as well as the contending parties? Is it not more likely to do it than this tribunal?

Mr. HATHEWAY. I think that is true. I think your statement is entirely logical.

Senator UNDERWOOD. Now, let me ask another proposition: Looking at it from the standpoint of these men—and, of course, there is a point where you can raise the wages (I think it is said that 43 per cent of the average charge of conducting railroads is wages); there may be a point ultimately where you could increase that wage to a point where you would bankrupt the railroads unless you increased the rate of passenger and freight traffic.

Mr. HATHEWAY. That is true.

Senator UNDERWOOD. Now, the finding of this body—in the present bill—does not take care of that question at all. It does not bring any power, except the question as to whether the commission will look to it itself in the future—whether it will adjust the rates to meet the wage increases. Now, if the commission itself should make an increase, it necessarily would rest on the shoulders of the commission, to be either sure that the earning capacity of the railroad at present was sufficient to meet the wage increase or make the necessary increase to pay the increased wages.

Mr. HATHEWAY. I think that is true.

Senator UNDERWOOD. Is it not better to put that power of determining the question of whether there will be a raise of wages in the

hands of the only men who have the power to meet it by either saying that the earning capacity of this road is sufficient already to pay this wage or, if insufficient, to raise the rates so it will be sufficient? Is not that the only way to do it and keep the channels of trade open?

Mr. HATHEWAY. It seems to me, Senator, the situation which developed last summer makes this a logical conclusion, almost inevitably. The only question is whether we are ready for it.

Senator UNDERWOOD. The only question with you is the question of the expediency of attempting it?

Mr. HATHEWAY. Yes, sir.

Senator UNDERWOOD. That is primarily a question for Congress to determine—how far it should go.

Mr. HATHEWAY. Yes, sir.

Senator UNDERWOOD. That is all.

The CHAIRMAN. That is all, Mr. Hatheway.

I will state to the committee that unless there is some objection, I will have inserted in the record, as a part of it, this compilation made by the Board of Mediation and Conciliation, of the arbitration and conciliation laws of the principal countries of the world, and so forth. It is already a public document and I presume it can be printed without much expense.

Senator POMERENE. Why would it not be well to have it printed as a Senate document?

The CHAIRMAN. Perhaps that can be done.

(Whereupon, at 12 o'clock m., an adjournment was taken until to-morrow, Thursday, January 4, 1917, at 10 o'clock a. m.)







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